

The Judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute.

Utah State Constitution  
Article VIII, Sec. 1  
July 1, 1985

# INTRO TO THE COURTS

# INTRODUCTION TO THE COURT SYSTEM AND ITS JURISDICTION

Every form of government, whether a democracy, monarchy or dictatorship provides a system for resolving disputes which inevitably arise among people. In the United States there is a dual legal system. One composed of Federal courts and the other of State courts. Federal courts are those created by Federal Law. State courts are created by laws of the individual States. Every State in the United States has its own court system. The federal court and the state court systems are strikingly similar. Both derive their heritage from the legal system of England but have developed separately over the last two hundred years. No two states have exactly the same laws or the same procedures in their courts. Furthermore, the federal system is not exactly like that of any of the states. Although the terminology describing the various courts within a given system may vary the basic functions of these courts are the same.

Each of the systems has a variety of courts. All have courts where a dispute is heard initially. These courts are known as trial courts. Trial courts are the workhorse of the court system. It is where most lawsuits are filed. Trial courts are places where witnesses testify, a Judge presides, and a Judge or Jury will render a verdict.

No two states have exactly the same laws or the same procedures in their courts. The federal system is not exactly like that of any of the states.

Every court system is divided into at least two classes of court:

1. Trial courts
2. Appellate courts

## ABOUT THE COURT SYSTEM

### TRIAL COURTS

These courts are the workhorse of the court system. It is where most lawsuits are filed. Trial courts decide questions of law and questions of fact. Questions of fact focus on what happened and may be decided by either the judge or a jury. Questions of law focus on the law or proper procedure to be applied to a particular case, (such as was the evidence admissible) and are always decided by the judge. Most cases are resolved in the trial court.

### INTERMEDIATE APPELLATE COURT

This is the court that stands between the trial court and the court of final review. Most appeals from the trial courts must go to the intermediate appellate court and are resolved there. Cases of considerable significance are appealed from the intermediate appellate court and are accepted by the supreme court or the court of final appeal for review.

### THE APPELLATE COURT

When the losing party feels that questions of law were erroneously decided by the trial court judge, it has the right to appeal the case to an appellate court. The appellate court considers questions of law only and does not retry the facts of the case. Both federal and state court systems have a final court of appeal. In most systems it is called the supreme court. Published opinions of an appellate court become the rule of law (precedent) in the particular geographical jurisdiction of that court.

## ADMINISTRATIVE STRUCTURE OF THE COURTS

### JUDICIAL COUNCIL

The Utah Judicial council is the “senate” of the judiciary. It has the responsibility to adopt uniform rules for the administration of all the courts in the state. The Council also sets standards for judicial performance, court facilities, support services, and judicial and non-judicial staff levels.

It consists of thirteen members who serve staggered three-year terms. The Chief Justice of the Supreme Court chairs the Council. The other members include: A Supreme Court Justice; a judge of the Court of Appeals; five District Court judges; two Juvenile Court judges; two Justice Court judges; a state bar representative who is a non-voting member; and the State Court Administrator, who serves as secretariat.

The Judicial Council holds monthly meetings at the Administrative Office of the Courts in Salt Lake City. All the meetings are open and may be attended by interested parties. They provide an opportunity for other branches of government, federal agencies, and citizens to present issues and concerns directly to the judiciary.

### BOARD OF JUDGES

The Judicial Council has established a Board of Judges for each level of court. The purpose of the Board is to adopt administrative rules in accordance with the standards and guidelines of the Judicial Council; to advise the Council; to supervise the implantation of Council policies; to serve as liaison between local judges and the Council; and to develop statewide budget and legislative priorities. The Board meets monthly.

## STATE COURT ADMINISTRATION

The Administrative Office of the Courts has the responsibility to implement the standards, policies, and rules established by the Judicial Council, organize and administer all of the non-judicial activities of the court, prepare the state judicial budget, conduct studies and develop procedures to further the administration of the courts.

The State Court Administrator is Dan Becker. He is assisted by a deputy state court administrator, district and juvenile court administrators, trial court executives and personnel who work in the Administrative Office in the following areas: Personnel Management, Public Information, Planning, Research, Finance, Data Processing, Judicial Education, Security, Facilities, and General Counsel. The Administrative Office serves as staff to the Judicial Council, rules committees, boards of judges, standing and ad hoc committees, and nominating commissions.

## LOCAL COURT ADMINISTRATION

Presiding judges are elected in the district, and juvenile courts in each judicial district. The presiding judge, in addition to judicial responsibilities, oversees the activities and operation of the court. The presiding judge is assisted by a court executive, who supervises the work of all non-judicial court staff and serves as the administrative officer.

# APPOINTMENT AND RETENTION OF UTAH JUDGES

## APPOINTMENT

The State Constitution has established nine judicial nominating commissions in Utah. One commission serves the district and juvenile courts within each of the eight judicial districts. One commission serves the Supreme Court and the Court of Appeals. Each commission is responsible for nominating judges to fill vacancies in courts of record only, occurring within its geographical boundaries.

Each commission has seven members, who serve one four-year term. The Governor appoints four lay citizens, no more than two of whom may be from the same political party. The State Bar appoints two lawyers of different political parties, the Chief Justice of the Supreme Court, or his designee from the Supreme Court, chairs each commission. The Administrative Office of the Courts provides staff support for all nominating commissions.

The nominating commissions screen all applications, and then evaluate, investigate, and interview select candidates for a judicial vacancy. Candidates must be at least 25 years old, U.S. citizens, residents of Utah for at least three years preceding selection, reside in the geographic division for which they are selected, and licensed to practice law in Utah.

After the interviewing process, the commissioners submit three names to the Governor for consideration. The Governor selects one name from the list and, following hearings, the Utah Senate may confirm or reject the Governor's nomination.

If confirmed, the judge serves for three years, during which he or she is evaluated once as part of the Judicial Council's Performance Evaluation process. The Council certifies the judge's compliance with performance standards and notifies the public accordingly.

## RETENTION

The judge stands for his or her first retention election during the fourth year after appointment. The judge must receive a majority of votes to retain the judgeship.

Following the first retention election, all judges stand for retention election every six years, and Supreme Court Justices every ten years. During the six year term of office, each judge undergoes three evaluations, which include bar surveys, workload reviews, ethics and case delay checks, and participation in on going judicial education. At the end of the third evaluation, the Council determines whether to certify that judge as meeting the pre-established performance standards. The Council then provides the information in the voter's information pamphlet prior to election day.



## COURT ORGANIZATION

The Utah state court system is comprised of two appellate courts; the Supreme Court and the Court of Appeals; and three trial courts, the District Court, Juvenile, and Justice Courts.

### SUPREME COURT

The Supreme Court is the court of last resort in Utah and is the highest appellate court in the state. The court consists of five justices who serve ten-year terms. The justices elect a chief justice by majority vote to serve for four years, and an associate chief justice to serve for two years. In addition to performing judicial duties, the chief justice is the chief administrative officer for the judicial branch of government.

The Supreme Court has original jurisdiction to answer questions of state law certified from federal court and to issue all extraordinary writs. The Court has appellate jurisdiction to hear first degree and capital felony convictions from the district court and civil judgments other than domestic relations. It also has jurisdiction over judgments of the Court of Appeals, and proceedings of the Judicial Conduct Commission. The Supreme Court review administrative proceedings of the Public Service Commission, Tax Commission, Board of State Lands, Board of Oil, Gas and Mining, and the State Engineer. The Supreme Court also has jurisdiction over judgments of the Court of Appeals by writ of certiorari, proceedings of the Judicial Conduct Commission, lawyer discipline, and both constitutional and elections questions. Under the revised Judicial Article of the Utah Constitution, the Supreme Court now has original jurisdiction over questions of state law certified from federal court and extraordinary writs.

Supreme Court sessions are conducted regularly at the State Capitol in Salt Lake City, but the Court may sit in other locations occasionally. The Court generally meets the first and third Mondays of each month to decide procedural and substantive matters presented on a law and motion calendar. Following presentation of oral arguments by attorneys the justices hold a conference and either grant or deny the motions. Only three of the five justices sit on the law and motion panel, allowing two justices to devote more time to writing opinions.

In the second full week of every month, the Court schedules oral arguments. After attorneys argue their cases before the Court, the justices hold a conference, reach a consensus, and one justice is assigned to write an opinion. Writing assignments are rotated to distribute the caseload as equally as possible. The justices may also elect to write separate concurring or dissenting opinions.

The justices are assisted by law clerks, who are recent law school graduates with the responsibility to do legal research on issues before the court; by central staff attorneys who screen the cases to be heard by the court; and by a Clerk of the Court who is responsible for processing legal matters filed with the court.

The Supreme Court also adopts rules of civil and criminal procedure and rules of evidence for use in the state courts and manages the appellate process. The Court also governs the practice of law, including admission to practice and the conduct and discipline of lawyers.

## COURT OF APPEALS

The Court of Appeals, created in 1987, consists of seven judges who serve six-year terms. A presiding judge is elected by majority vote to serve for two years.

The jurisdiction of the Court of Appeals is complementary to that of the Supreme Court. The Court of Appeals hears all appeals from the Juvenile Courts. It also determines appeals from District Court involving domestic relation cases, including divorce, annulment, property division, child custody, support, visitation, adoption and paternity, and criminal matters of less than a first degree or capital felony. The Court also reviews appeals of administrative proceedings by state agencies except those reviewed by the Supreme Court and appeals from the Utah Military Court. It has jurisdiction to hear cases transferred to it by the Supreme Court.

The Court usually holds court in Salt Lake City, but “rides the Circuit” several times per year, holding court in different geographical regions of the state. The Court sits and renders judgment in rotating panels of three judges. It is prohibited by statute from sitting ENBANC (all seven members at once).

The panels hear oral arguments on cases during the third and fourth week of the month. After argument, the judges conference on the case and determine the result. One of the judges of the panel is assigned to write the opinion of the court.

One of the seven panels is designated as the law and motion panel. This panel serves the same purpose as the Supreme Court’s law and motion panel, but rarely hears oral argument. The law and motion panel also hears appeals under Rule 31, which permits the Court to dispose of cases without a written opinion.

The judges are assisted by the Clerk of the Court, central staff attorneys, and law clerks.

## DISTRICT COURT

The District Court is the state trial court of general jurisdiction. There are 70 district judges serving in the state's eight judicial districts.

The District Court has general jurisdiction to try all civil cases involving claims of more than \$20,000 and all criminal felonies, such as homicides, assaults, sex and drug offenses, forgery, arson and robbery. An important part of the District Court caseload is domestic relations, such as divorces, child custody and support, adoption and probate. District judges also have the power to issue all extraordinary writs. In addition, the Court serves as an appellate court to review informal adjudicative proceedings from administrative agencies.

Each district judge is assigned a court clerk and a bailiff. Either a court reporter or an electronic recording device is provided to maintain a verbatim record of all court proceedings. In the more populous districts, commissioners have been appointed to assist the district judges by conducting pretrial hearings, pursuing settlements, making recommendations to the judges and handling domestic relations. Commissioners can also accept pleas in misdemeanor cases and with the consent of the parties, conduct misdemeanor trials. If a party disagrees with the court commissioner's recommendations, a rehearing may be requested before a judge.

Criminal appeals from the District Court are heard in the Court of Appeals, except those involving a criminal conviction of a first degree or capital felony.

## Circuit Courts

On January 1, 1992, Utah's circuit courts were reorganized. The district courts have jurisdiction over any matter that would previously have been within the jurisdiction of the circuit court. The Circuit Courts had jurisdiction, both law and equity, in all civil matters if the sum claimed was less than \$20,000, exclusive of court costs and with some exceptions. The Circuit Courts had jurisdiction to try criminal charges for all classes of misdemeanors and infractions, and traffic offenses, and could hold preliminary hearings to bind over accused felons to stand trial in District Court.

## Small Claims

The District Courts have a small claims department, which covers disputes under \$5,000. A district judge usually hears small claims cases, but in some areas of the state, the Supreme Court appoints a lawyer as a judge pro tempore and pro bono to hear the cases.

Any individual or business may use the small claims court, which is often conducted in the evening for the convenience of the public. Most litigants appear without an attorney. The plaintiff (the person who filed the claim) tells his or her side of the story to the judge and presents any witnesses or documents supporting their claim. The defendant (the person against whom the claim was filed) has the opportunity to ask questions of those who testify for the plaintiff. The defendant then presents his or her case and the plaintiff may ask questions. The judge will usually make his ruling at the close of the trial.

In small claims cases, the plaintiff or defendant may appeal the court's judgment. All small claims matters are not of record, which means no verbatim record is kept on the proceedings.

The District Court hears all appeals from the small claims department, and all trials de novo (new trials) from the justice courts.

## JUSTICE COURT

Justice Courts are limited jurisdiction courts, not of record, which means no verbatim record of the proceedings is kept. Justice Courts are located throughout Utah, commonly in rural areas where there is limited access to district courts. There are 128 justice court judges serving in 147 county and municipal courts.

There are two types of justice court judges; county judge who are initially appointed by a county commission and then stand for retention election every four years, and municipal judges who are appointed by city officials for a four year term. Some are both county and municipal judges. Some judges hear cases daily, and other have limited court hours each week. Justice court judges need not be attorneys, although they receive extensive and continuing legal training. All justice court judges must attend thirty hours of continuing education each year to remain certified.

The Justice Courts have exclusive jurisdiction over Class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction. They may issue search warrants and other process. The Justice Courts also share jurisdiction with the juvenile courts over minors 16 or 17 year old, who are charged with traffic offenses, except for automobile homicide, alcohol or drug related traffic offenses, reckless driving, and fleeing from an officer.

Jury trial in the Justice Courts are heard by four person juries. City attorneys prosecute cases involving municipal ordinance violations and state law in municipal courts; and county attorneys prosecute cases involving violations of county ordinances and state law in the county courts, except Salt Lake County where the District Attorneys office prosecute the cases. Litigants and defendants often act without an attorney (pro se) in justice courts.

Any person not satisfied with a judgment rendered in justice court is entitled to a trial de novo (new trial) in the District Court. Any justice court judge may be appointed by the presiding district judge to conduct preliminary examinations for felony cases under some circumstances. Justice Courts also may, if certified by the Judicial Council, create a Small Claims Department, which has jurisdiction over claims under \$5,000.

## JUVENILE COURT

The Juvenile Court is a court of special jurisdiction. It consists of 23 judges and one commissioner, who serve in the state's eight judicial districts.

The Juvenile Court has exclusive original jurisdiction over youths, under 18 years of age, who violate any federal, state or municipal law or ordinance and any child who is abused, neglected, or dependent. The court has the power to determine child custody, support and visitation in some circumstances; to permanently terminate parental rights; to authorize or require treatment for mentally ill or retarded children; to place children in the custody or care of foster homes, group homes, special treatment centers, or secure institutions, and to require children to pay fines or make restitution for damage or loss resulting from their delinquent acts. It also has jurisdiction over habitual truants and runaways.

In addition, the Court has exclusive jurisdiction in traffic offenses involving minors related to automobile homicide, driving under the influence of alcohol or drugs, reckless driving, joy riding, and fleeing a police officer. The commissioner who assists the juvenile judges in the Third District is an attorney who hears a variety of cases, ranging from traffic citations, truancy and protective custody to more serious crimes. The commissioner submits his findings and recommendations to a judge in writing. If a party disagrees with the commissioner's ruling, a rehearing before a judge may be requested.

The Juvenile Court, unlike other state courts of record, administers a probation department. Probation officers supervise youth who have been placed on probation by the Court, conduct evaluations and submit reports on the progress of each juvenile.

As a member of the Interstate Compact on Juveniles, the Court accepts supervision of juveniles who move to Utah from another state (who were under court supervision before moving). In turn, the court often requests another state to supervise juveniles who move while still under court supervision in Utah.

All appeals from the Juvenile Court are heard in the Court of Appeals.

# GUIDELINES FOR COURT PROCEDURES



## GUIDELINES FOR COURT PROCEDURES

The Judicial Council has responsibility for developing policies for the administration of the courts. These policies are contained in the Code of Judicial Administration, which is a compilation of rules adopted by the Judicial Council. It was first published in October 1988, and will be revised annually. It encompasses what was previously called the Rules of Practice and also many rules initially adopted as local court rules.

The Supreme Court is responsible for establishing rules of evidence and procedure for the courts. The legislature does not have any authority to initiate rules of procedure, but can amend existing rules of procedure. There must be a two-thirds vote in the legislature to make any changes in the procedures established by the Supreme Court.

The Utah Code is a compilation of all the laws or statutes which are passed by the State legislature. New laws are passed and old laws are amended each time the legislature meets. These changes become part of the code. The Utah Code provides the basis for the courts in providing remedies for violations of the law.

## REPRESENTING THE JUDICIARY

The importance of the role of the court clerk in representing the judiciary to the public cannot be overemphasized. Few people ever meet a judge or appear before him/her in court. The majority of people who come to a justice court see only the clerks. The impression they receive of the clerks is the impression they maintain of the whole court system. Support of the court system by the public depends upon a positive image received when dealing with the court.

As a court clerk, you will work with your local governing officials, Judges, attorneys, police officers and corrections staff. People at the court range from those paying parking tickets, and those accused of major crimes. In the civil area, plaintiffs and defendants are involved in controversies which may involve thousands of dollars. In addition, there will be those called to court for jury duty, school groups, and on occasion, newspaper reporters. Most of these people will be nervous, angry and unsure of court procedures and policies.

A court clerk must be helpful and responsive to all of these diverse segments of the public. This is not always easy. The citizen who comes to the Justice court is often confused, upset and can be abrasive. Often a clerk must repeat instructions several times before the person understands. The clerk, as a representative of the court, is a target of criticism for everything that has happened to the person with the legal system. Some court clientele may be particularly difficult to handle. The court clerk must attempt to maintain a calm, courteous demeanor, remembering that other people in the court will be observing his/her skills at dealing with these difficult situations. A court clerk who always maintains a courteous manner projects the best possible image of the judiciary to the public.

## ETHICAL CONDUCT OF EMPLOYEES

Courts are supposed to be “fair” and in a court setting, even more than in other places, everyone should take special care to conduct themselves ethically. The problem is to define the ethical constraints that apply to court employees. Judges are bound by a relatively comprehensive Code of Judicial Conduct, but clerks are given less guidance.

For the most part, ethics consists of common sense and a little sensitivity. Place yourself in the position of the defendant, or of some neutral person watching your conduct. If you think that what you are doing might look unfair to them, think twice about doing it. There is almost always another way to accomplish whatever your task is without seeming unfair. The bottom line is, if it might be or appear to be unethical, don’t do it.

There is some guidance for clerk conduct, and what guidance there is should be followed. First, if your local government has a code of conduct or some other set of ethical rules, read them and follow them. If not, or in addition to those rules, the following may be helpful. Utah Code Section 67 Chapter 16, Utah Code Section 78 Chapter 5 and the Code of Personal Conduct are useful guides for all court employees.

## GIVING LEGAL ADVICE

Parties will frequently ask questions of you as a clerk, and as a service organization we never want to discourage questions. However, clerks need to be wary about the type of information they give. Some types of information are appropriate, some are not. The important thing to avoid is giving legal advice. The problem is that the line between court information and legal advice is not a clear one.

One way that a distinction can be made is that legal advice is usually given in response to a “should” question, and appropriate information is in response to a “how” or “where” question. For example, one should not answer a question such as “Should I ask for attorney fees in this small claim affidavit?” But one should tell someone where to file it or how they file it. In short, a clerk should discuss the procedures followed in the court, but not the substance of the person’s claim, or how best to plead, argue or say something.

If you have questions, ask the judge, your city or county attorney, or one of the attorneys in the Administrative Office of the Courts.

## CHAPTER 16

### ETHICS

#### Section

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#### **67-16-1. Short title.**

This chapter is known as the "Utah Public Officers' and Employees' Ethics Act."

#### **67-16-2. Purpose of chapter.**

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests. In this manner the Legislature intends to promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government. It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.

#### **67-16-3. Definitions.**

As used in this chapter:

- (1) "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.
- (2) "Agency head" means the chief executive or administrative officer of any agency.
- (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.
- (4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63, [Chapter 2](#), Government Records Access and Management Act, or other applicable provision of law.

(7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:

(a) any decision, determination, finding, ruling, or order; and

(b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.

(8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.

(9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.

(10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.

(11) "Political subdivision" means a district, county, school district, or any other political subdivision of the state that is not an agency, but does not include municipalities.

(12) "Public employee" means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by the state or any of its political subdivisions. "Public employee" does not include legislators or legislative employees.

(13) "Public officer" means all elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.

(14) "State" means the state of Utah.

(15) "Substantial interest" means the ownership, either legally or equitably, by an individual, his spouse, or his minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

**67-16-4. Improperly disclosing or using private, controlled, or protected information - Using position to secure privileges or exemptions - Accepting employment which would impair independence of judgment or ethical performance.**

It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of [Section 63-56-72](#) or [76-8-105](#), to:

(1) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(2) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

- (3) use or attempt to use his official position to:
  - (a) further substantially the officer's or employee's personal economic interest; or
  - (b) secure special privileges or exemptions for himself or others;
- (4) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or
- (5) accept other employment that he might expect would interfere with the ethical performance of his public duties.

**67-16-5. Accepting gift, compensation, or loan - When prohibited.**

Statute text

- (1) As used in this section, "economic benefit tantamount to a gift" includes:
  - (a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
  - (b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.
- (2) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of [Section 63-56-72](#) or [76-8-105](#), to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:
  - (a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
  - (b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or
  - (c) if he recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in [Section 67-16-6](#).
- (3) Subsection (2) does not apply to:
  - (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
  - (b) an award publicly presented in recognition of public services;
  - (c) any bona fide loan made in the ordinary course of business; or
  - (d) a political campaign contribution.

**67-16-6. Receiving compensation for assistance in transaction involving an agency - Filing sworn statement.**

- (1) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of [Section 63-56-72](#) or [76-8-105](#), to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:
  - (a) the head of his own agency;
  - (b) the agency head of the agency with which the transaction is being conducted; and
  - (c) the state attorney general.
- (2) The statement shall contain:
  - (a) the name and address of the public officer or public employee involved;
  - (b) the name of the public officer's or public employee's agency;
  - (c) the name and address of the person or business entity being or to be assisted; and
  - (d) a brief description of:

- (i) the transaction as to which service is rendered or is to be rendered; and
- (ii) the nature of the service performed or to be performed.

(3) The statement required to be filed under Subsection (1) shall be filed within ten days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

(4) The statement is public information and shall be available for examination by the public.

**67-16-7. Disclosure of substantial interest in regulated business.**

(1) Every public officer or public employee who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the officer or employee is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest upon first becoming a public officer or public employee, and again whenever the public officer's or public employee's position in the business entity changes significantly or if the value of his interest in the entity is significantly increased.

(2) The disclosure required under Subsection (1) shall be made in a sworn statement filed with:

- (a) the state attorney general in the case of public officers and public employees of the state;
- (b) the chief governing body of the political subdivision in the case of public officers and public employees of a political subdivision;
- (c) the head of the agency with which the public officer or public employee is affiliated; and
- (d) in the case of a public employee, with the immediate supervisor of the public employee.

(3) This section does not apply to instances where the total value of the interest does not exceed \$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest.

(4) Disclosures made under this section are public information and shall be available for examination by the public.

**67-16-8. Participation in transaction involving business as to which public officer or employee has interest - Exceptions.**

(1) No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided under [Section 67-16-7](#).

(2) A concession contract between an agency, political subdivision, or the state and a certified professional golf association member who is a public employee or officer does not violate the provisions of Subsection (1) or Title 10, [Chapter 3](#), Part 13.

**67-16-9. Conflict of interests prohibited.**

No public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

**67-16-10. Inducing others to violate chapter.**

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

**67-16-11. Applicability of provisions.**

The provisions of this chapter apply to all public officers and public employees.

**67-16-12. Penalties for violation - Removal from office or dismissal from employment.**

In addition to any penalty contained in any other provision of law, any public officer or public employee who knowingly and intentionally violates this chapter, with the exception of [Sections 67-16-6](#) and [67-16-7](#), shall be dismissed from employment or removed from office as provided by law, rule, or policy within the agency; and shall be punished as follows:

- (1) as a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
- (2) as a felony of the third degree if:
  - (a) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
  - (b) the public officer or public employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
- (3) as a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
- (4) as a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

**67-16-14. Unethical transactions - Duty to dismiss officer or employee - Right to rescind or void contract.**

If any transaction is entered into in violation of [Section 67-16-6](#), [67-16-7](#), or [67-16-8](#), the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.





# CODE OF PERSONAL CONDUCT

## PURPOSE

Public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. Judicial employees should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct in order to preserve the integrity and independence of the judiciary. This policy should be construed and applied to further that objective.

## SCOPE

This policy establishes standards of conduct expected of court employees. It addresses the general performance of duties, abuse of position, confidentiality, conflict of interest, outside interests and secondary employment. It specifically prohibits discrimination or harassment in the workplace and establishes the position of ombudsperson to assist management in resolving complaints.

This policy applies to all court employees.

## CROSS REFERENCES:

Utah Code Ann. Section 67-16-1 et. seq.  
42 United States Code Section 2000 (e) (1982)  
Code of Judicial Administration Section 4-202, Records Dissemination and Section 3-201,  
Professional Conduct of Court Commissioners  
Code of Judicial Conduct  
Grievance and Appeal, Policy 620  
Discipline, Policy 610  
Fairness in Recruiting and Hiring, Policy 130

## POLICY AND PROCEDURE

1. General.
  1. Employees shall comply with the provision of UCA 67-16-1 et. seq. the Utah Public Officers' and Employees' Ethics Act.
  2. Employees whose conduct is governed by more than one set of ethical regulations shall conform their conduct to the more stringent standard.
2. Management.
  - 2.1 Management shall make reasonable efforts to ensure that employees subject to their directions and control observe the ethical standards set out in these policies.

- 2.2 Management shall diligently discharge administrative responsibilities, maintain professional competence in judicial administration and assist other employees in the performance of their duties.
  - 2.3 Management shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.
  - 2.4 Managers may belong to an employee organization but shall not be eligible to be a representative or officer of an employee organization that assists employees in filing grievances or civil actions.
3. Performance of duties.
- 3.1 Employees are expected to apply themselves to their assigned duties during the full schedule for which they are compensated.
  - 3.2 No employee shall conceal, alter, falsify, destroy, mutilate, or fail to make required entries on any court records. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.
  - 3.3 No employee shall discriminate or manifest by words or actions, bias or prejudice against any person in the conduct of service.
  - 3.4 An employee shall not recommend attorneys, therapists, counseling agencies or other professionals but shall refer such inquiries to the licensing agency or professional organization that governs that profession. When an employee is required as part of the employee's job to refer an individual to a therapist or counseling agency, the employee shall follow the guidelines established by the district and not inconsistent with section 7 below, Conflict of Interest.
  - 3.5 No employee shall provide legal advice, unless it is part of an official duty.
  - 3.6 An employee shall respond to appropriate inquiries and provide information regarding court procedures.
  - 3.7 No employee shall refuse to enforce or otherwise carry out any properly issued rules or order of the court, nor shall a court employee exceed that authority.
  - 3.8 No employee shall be required to perform any duty not related to the official business of the court.
  - 3.9 Managers shall provide information and instruction to employees regarding the security policy and procedures for their work location.
4. Abuse of position.

- 4.1 An employee shall use the public resources, property, and funds under the employee's control, and any influence, power, authority or information derived therefrom, judiciously and solely in accordance with established procedures.
- 4.2 An employee shall not use or attempt to use a court position to secure privileges or exemptions.
- 4.3 An employee shall not discriminate by dispensing special favors to anyone, whether or not for remuneration.
- 4.4 An employee shall not assist any person securing a contract with the court system in a manner not available to any other interested person.
- 4.5 An employee shall not be influenced in the performance of the employee's duties by kinship, rank or position.
- 4.6 An employee shall not request or accept a fee or compensation beyond that received by the employee in an official capacity for advice, information, or assistance that is otherwise available from the courts.
- 4.7 An employee shall not solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality, or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties. This subsection does not apply to the following:
  - 4.7.1 An award presented in recognition of public services;
  - 4.7.2 Any bonafide loan made in the ordinary course of business by any institution authorized by the laws of this state or any other state to make such loans;
  - 4.7.3 Political campaign contributions if used in a political campaign of the recipient public officer or public employee;
  - 4.7.4 An occasional non-pecuniary gift having a value not in excess of \$50.
- 4.8 An employee shall not receive outside compensation for performance of court duties except in cases of:
  - 4.8.1 An award of meritorious public contribution publicly awarded;
  - 4.8.2 The receipt of honoraria or expenses paid for papers, transcripts, talks, demonstrations, or appearances made by an employee during work hours with the approval of management; or on the employee's own time for

which the employee is not compensated by the courts and which is not prohibited by these rules;

- 4.8.3 The receipt of usual social amenities, ceremonial gifts, or insubstantial advertising gifts.

## 5. Discrimination/Harassment Prohibited.

- 5.1 It is the goal of the judiciary to create a positive work environment where employees are treated with respect and where they can work free of discrimination or harassment. To that end, the courts shall not fail or refuse to hire or to discharge any individual or otherwise to discriminate against or harass any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, handicap, or national origin.

- 5.1.1 Discrimination on the basis of sex includes sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

## 5.2 General Administrative Policy

- 5.2.1 No employee shall engage in conduct constituting discrimination/harassment. Management shall discipline any employee who, after investigation, is determined to have engaged in such conduct.
  - 5.2.2 Managers who knew or should have known of incidents of discrimination/harassment and failed to take appropriate action in accordance with this policy shall be disciplined.
  - 5.2.3 Management shall discipline an employee who takes reprisals against another employee for filing a complaint alleging discrimination/harassment or for appearing as a witness for any party in a discrimination/harassment complaint. Management shall discipline an employee who submits a claim which is determined to be fraudulent or in bad faith.
  - 5.2.4 Conduct occurring off duty or off court premises may constitute discrimination/harassment.

- 5.2.5 Any judge, commissioner or employee who has reason to believe that an employee is the victim of discrimination/harassment should encourage the victim to seek resolution of the matter, in accordance with the procedures established in this policy. In the alternative, the employee may inform management or the ombudsperson of the existence of a possible complaint.

### 5.3 Ombudsperson

- 5.3.1 The state-wide ombudsposition is created as a resource for management and employees. The ombudsperson is an alternative for employees who would otherwise feel uncomfortable discussing alleged incidents of discrimination/harassment with management. The role of the ombudsperson is to facilitate communication and thereby assist management in the resolution of complaints.
- 5.3.2 The director, in consultation with the state court administrator, shall appoint an ombudsperson.
- 5.3.3 The duties of the ombudsperson shall be added to the ombudsperson's performance plan and shall include developing curricula and ensuring that all employees receive training on the subject of discrimination/harassment.
- 5.3.4 The director, in consultation with the director of judicial education and general counsel, shall develop a program for the initial and continuing education of the ombudsperson.

### 5.4 Resolution of a Complaint Against a Court Employee.

- 5.4.1. An employee who is complaining of discrimination/harassment should inform the alleged offender that the behavior is unwelcome. Alternatively, the employee should discuss the matter with management or the ombudsperson.
- 5.4.2 On request, the ombudsperson shall provide assistance by advising the employee about how to address the issue with the alleged offender or helping the employee bring the issue to management.
  - 5.4.2.1 Except as provided in subsection 5.4.2.2 below, the ombudsperson shall inform the court executive of the incident, within five days of learning of the incident. If the court executive is the alleged offender then the ombudsperson, within five days of learning of the incident, shall inform the court level administrator. If the complainant is employed by the Administrative Office of the Courts, the ombudsperson shall inform the deputy court

administrator or the state court administrator, unless either is the alleged offender in which event the ombudsperson shall inform the Presiding Officer of the Judicial Council.

5.4.2.2 If, after discussion with the ombudsperson, the employee concludes that discrimination/harassment did not occur, the ombudsperson shall not report the incident to management.

5.4.3. On request, management shall provide assistance by advising the employee about how to address the issue with the alleged offender or by discussing the issue with the alleged offender.

5.4.4. An employee may submit a written complaint to management or the ombudsperson if:

5.4.4.1 Initial efforts to resolve the matter are unsuccessful; or

5.4.4.2 The complaint is a second complaint against the individual after the individual has been informed that the behavior is unwelcome, whether or not submitted by the same complainant; or

5.4.4.3 If management, in consultation with the ombudsperson, concludes that the conduct is egregious.

5.4.5. Upon receipt, the written complaint shall be referred immediately to the court executive. If the court executive is the alleged offender or otherwise concludes that he or she is unable to determine the matter impartially, the complaint shall be referred to the court level administrator. If the complainant is employed by the Administrative Office of the Courts, the complaint shall be referred to the deputy court administrator or the state court administrator, unless either is the alleged offender in which event the complaint shall be referred to the Presiding Officer of the Judicial Council.

5.4.5.1 Subject to paragraph 5.4.7 below, the manager who receives the complaint shall investigate the complaint.

5.4.5.2 The alleged offender shall be provided a copy of the written complaint.

5.4.6 The investigator shall determine whether the conduct complained of occurred and, in consultation with general counsel, whether the conduct constitutes discrimination/harassment. Within 20 days of receiving the complaint, the investigator shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The investigator shall provide a copy of the report to the parties and to the

director.

5.4.7 The investigator may be excused from the investigation and determination if the investigator is the immediate supervisor of either party; is a personal friend or member of the immediate family of either party; is so closely involved in the matter that the impartiality of the investigation or determination may be questioned; or determines that the time required for the investigation and determination is greater than the investigator can provide.

5.4.7.1 If the investigator is excused, the investigator shall refer the matter within three days to the director for appointment of an alternate investigator, and shall notify the parties of the referral.

5.4.7.2 The alternate shall determine whether the conduct complained of occurred and, in consultation with general counsel, whether the conduct constitutes discrimination/harassment. Within 20 days of the referral, the alternate shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The alternate may include in the report a recommendation regarding discipline. The alternate shall file the report with the director and the individual who referred the complaint and shall provide a copy to the parties.

5.4.8 At the conclusion of the investigation and determination, management shall impose discipline in accordance with the policies and procedures regarding discipline.

5.4.9 Either party may submit a grievance regarding the findings of the report by submitting the grievance to the third level of review, as defined in Section 7, Personnel Policies and Procedures. Only the person disciplined may submit a grievance regarding such discipline.

## 5.5 Investigation.

5.5.1 The investigation shall include an interview of the parties, any individuals identified by the parties, and other individuals, at the discretion of the investigator. If a recommendation regarding discipline is made, the official or body shall consider discipline imposed in other cases involving similar circumstances.

## 5.6 Process for Submitting a Complaint of Discrimination/Harassment Against a Person not Employed by the Courts.

5.6.1. The process for submitting a complaint against a person who is not an employee of the courts is the same as the process for submitting a complaint against an employee.

- 5.6.2 Management shall use all reasonable means to resolve the complaint, including referring the complaint to the employer of the alleged offender or to the regulator agency to which the alleged offender is subject.

## 5.7 Resolution of a Complaint Against a Judge or Commissioner

- 5.7.1 An employee who is complaining of discrimination/harassment should inform the alleged offender that the behavior is unwelcome or submit a complaint to the Presiding Officer of the Judicial Council or to the ombudsperson.
- 5.7.2 On request, the ombudsperson shall assist the employee by advising the employee about how to address the issue with the alleged offender or helping the employee bring the issue to the Presiding Officer of the Judicial Council.
  - 5.7.2.1 Except as provided in subsection 5.7.2.2 below, the ombudsperson shall inform the Presiding Officer of the Judicial Council of the incident, within five days of learning of the incident.
  - 5.7.2.2 If, after discussion with the ombudsperson, the employee concludes that discrimination/harassment did not occur, the ombudsperson shall not report the incident to the Presiding Officer of the Judicial Council.
- 5.7.3. On request, the Presiding Officer of the Judicial Council shall provide assistance by advising the employee about how to address the issue with the alleged offender or by discussing the issue with the alleged offender.
- 5.7.4 Upon receiving information about a complaint, the Presiding Officer of the Judicial Council shall facilitate communication between the parties and resolve the complaint.
- 5.7.5 An employee may submit a written complaint to management or the ombudsperson if:
  - 5.7.5.1 Initial efforts to resolve the matter are unsuccessful; or
  - 5.7.5.2 The complaint is a second complaint against the same individual after the individual had been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
  - 5.7.5.3 If the court executive, in consultation with the ombudsperson, concludes that the conduct complained of is egregious.
- 5.7.6 Upon receipt, the court executive shall refer the written complaint to the Presiding Officer of the Judicial Council.



5.7.6.1 Upon referral, the Presiding Officer shall immediately provide the alleged offender and the court level administrator with a copy of the written complaint.

5.7.7 The Presiding Officer shall resolve the complaint in accordance with the Code of Judicial Administration.

5.8 Records.

5.8.1 All complaints, notices, correspondence, reports, and other documents regarding a written complaint shall be maintained by the director separate from any personnel file. The information is private data as defined by the Code of Judicial Administration.

5.8.2 The director shall keep in a secure file all records of complaints determined to be without merit.

5.8.3 The director shall place records regarding discipline imposed as a result of a complaint of discrimination /harassment or violation of this policy in the disciplined employee's personnel file. If the director is the subject of a written complaint, then the record shall be kept by the state court administrator.

6. Confidentiality.

6.1 An employee shall not disclose to any unauthorized person any information acquired in the course of employment other than public data as defined in the Code of Judicial Administration.

6.2 An employee shall abstain from public comment about proceedings pending or impending in any court without prior approval of the court or the trial court executive.

6.3 An employee shall not initiate or repeat ex-parte communications with a litigant, witness, or attorney to the trier of fact, attorney, witness, or litigant that might affect the outcome of the case.

7. Conflict of interest.

7.1 An employee shall exercise reasonable diligence to become aware of personal conflicts of interest, disclose such conflicts to management, and take appropriate steps to eliminate conflicts when they arise.

7.2 When an employee perceives any potential conflict of interest or has a question about the law, statutes, and policies the employee shall discuss them with management.

- 7.3 No employee shall have personal investments in any business entity which will create a substantial conflict between the employee's private interest and public duties. The employee shall disclose any such conflicts to management. Management and the employee shall take appropriate steps to eliminate the conflict.
- 7.4 An employee shall not enter into any contract with the courts for services, supplies, equipment, leases, or realty apart from the employment contract relating to the employee's position.
- 7.5 When an employee is required by the responsibilities of the position to take an action or make a decision which could be interpreted as a conflict of interest, the employee shall declare the potential conflict to management and may be excused by management from so acting.

## 8. Outside Activities

Court employees shall not use state-owned property in support of outside interests and activities when such use would compromise the integrity of the court or interfere with the employee's court duties. Specifically, an employee who is involved in an outside activity such as a civic organization, church organization, committee unrelated to court business, public office, or service club, shall:

- 8.1 Pursue the outside activity on the employee's own time;
- 8.2 Pursue the outside activity away from court offices;
- 8.3 Discourage any phone, mail or visitor contact related to the outside interest at court offices;
- 8.4 Arrange for annual leave or compensatory time off in advance to pursue the outside interest during business hours; and
- 8.5 Except as provided in section 9, not use data processing equipment or court supplies for the outside interest.

## 9. Personal use of state-owned computer equipment.

- 9.1 Personal use of court computer systems is permitted only when all of the following criteria are met:
  - 9.1.1 The use offers an opportunity for the employee to increase the employee's job-related knowledge and skills;
  - 9.1.2 The employee is not compensated for the work performed, unless the employee has received the prior written approval of the court level administrator;

- 9.1.3 The employee pays for the cost of consumables and other attendant expenses (diskettes, paper, computer online and access charges, etc.);
- 9.1.4 The employee uses the computer system after hours, on the employee's personal time;
- 9.1.5 The employee does not use the computer system for permanent storage of data;
- 9.1.6 The use does not conflict with the employee's court responsibilities or normal court business; and
- 9.1.7 The use has been approved by the employee's immediate supervisor.
- 9.2 Software developed on state-owned computer equipment is the property of the state.

## 10. Secondary Employment

- 10.1 Employment with the court system shall be the primary employment of full-time employees.
- 10.2 An employee may engage in secondary employment if the employment does not constitute a conflict of interest and conforms to the following provisions:
  - 10.2.1 The secondary employment shall not interfere with the employee's ability to preform job duties with full capacity;
  - 10.2.2 The secondary employment shall not be performed during the same hours that the employee is scheduled to work; and
  - 10.2.3 Except as provided by rule of the Judicial Council, the secondary employment shall not be with a lawyer, law firm, law enforcement agency, any other agency in the criminal justice system, constable, collection agency, clients referred from the court or under the supervision of the court, an organization or entity receiving referral of clients from the court or clients under the supervision of the court, or any organization or entity that is a regular party in court.
- 10.3 An employee who accepts secondary employment shall report the employment to management. The report shall be in writing and shall contain:
  - 10.3.1 The name of the employer;
  - 10.3.2 The working hours;

10.3.3 A description of duties and obligations;

10.3.4 Any possible conflicts of interest; and

10.3.5 The anticipated duration of the employment.

10.4 The employee shall submit the written statement to management prior to accepting the employment.

11. Political Activity.

An employee may participate in political activity that does not jeopardize the confidence of the public or of government officials in the impartiality of the judicial branch of government.

11.1 An employee shall not participate in political activity which conflicts with or otherwise affects the mission and activities of the Judiciary.

11.2 An employee shall not engage in political activity during work hours, unless on approved leave.

11.3 An employee shall not use state-owned equipment, supplies, or resources, and other attendant expenses (diskettes, paper, computer online and access charges, etc.) when engaged in political activity.

11.4 An employee shall not discriminate in favor of or against any person or applicant for employment based on political activities.

11.5 An employee shall not use the employee's title or position while engaging in political activity.

## CHAPTER 5

### JUSTICE COURTS

#### Section

- [78-5-0.5 to 78-5-41. Repealed.](#)
- [78-5-101. Creation of justice court - Not of record.](#)
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- [78-5-139. Requirements by Judicial Council for creating and certifying justice courts.](#)

[78-5-140. Dissolution of Justice Courts.](#)

**78-5-101. Creation of justice court - Not of record.**

Under [Article VIII, Section 1](#), Utah Constitution, there is created a court not of record known as the justice court. The judges of this court are justice court judges.

**78-5-101.5. Creation of Justice Courts - Classes of Justice Courts.**

(1) (a) For the purposes of this section, to "create a justice court" means to:

(i) establish a justice court; or

(ii) establish a justice court under Title 11, [Chapter 13](#), Interlocal Cooperation Act.

(b) A municipality or county that has created a justice court may change the form of its court to another listed in Subsection (1)(a) without being considered to have created a court.

(2) Justice courts shall be divided into the following classes:

(a) Class I: 501 or more citations or cases filed per month;

(b) Class II: 201-500 citations or cases filed per month;

(c) Class III: 61-200 citations or cases filed per month; and

(d) Class IV: 60 or fewer citations or cases filed per month.

(3) Municipalities or counties can elect to create a Class I or Class II justice court by filing a written declaration with the Judicial Council on or before July 1 at least two years prior to the effective date of the election. Upon demonstration of compliance with operating standards as established by statute and the Judicial Council, the Judicial Council shall certify the creation of the court pursuant to [Section 78-5-139](#).

(4) (a) Except as provided in Subsection (5), municipalities or counties can elect to create a Class III or Class IV justice court by establishing the need for the court and filing a written declaration with the Judicial Council on or before July 1 at least one year prior to the effective date of the election.

(b) In evaluating the need for the creation of a Class III or Class IV justice court, the Judicial Council shall consider factors of population, case filings, public convenience, availability of law enforcement agencies and court support services, proximity to other courts, and any special circumstances.

(c) The Judicial Council shall determine whether the municipality or county seeking to create a Class III or Class IV justice court has established the need for the court.

(d) Upon demonstration of compliance with operating standards as established by statute and the Judicial Council, the Judicial Council shall certify the creation of the court pursuant to [Section 78-5-139](#).

(5) (a) The following municipalities may create a justice court by filing a written declaration with the Judicial Council: American Fork, Bountiful, Brigham City, Cedar City, Clearfield, Elk Ridge, Kaysville, Layton, Logan, Moab, Murray, Ogden, Orem, Park City, Price, Provo, Richfield, Roosevelt, Roy, Salem, Salt Lake City, Sandy, Spanish Fork, St. George, Taylorsville, Tooele, Vernal, and West Valley City.

(b) To form a Class I or Class II justice court, the municipalities listed in Subsection (5)(a) shall file a written declaration with the Judicial Council on or before July 1 at least two years prior to the effective date of the election.

(c) To form a Class III or Class IV justice court, the municipalities listed in Subsection (5)(a) shall file a written declaration with the Judicial Council on or before July 1 at least one year prior to the effective date of the election.

(d) Upon demonstration of compliance with operating standards as established by statute and the Judicial Council, the Judicial Council shall certify the creation of the court pursuant to [Section 78-5-139](#).

(6) Upon request from a municipality or county seeking to create a justice court, the Judicial Council may shorten the time required between the city's or county's written declaration or election to create a justice court and the effective date of the election.

(7) The Judicial Council may by rule provide resources and procedures adequate for the timely disposition of all matters brought before the courts. The administrative office of the courts and local governments shall cooperate in allocating resources to operate the courts in the most efficient and effective manner based on the allocation of responsibility between courts of record and not of record.

#### **78-5-102. Offices of justice court judges.**

(1) Justice court judges holding office in:

- (a) county precincts are county justice court judges; and
- (b) cities or towns are municipal justice court judges.

(2) With the concurrence of the governing bodies of both the county and municipality, a justice court judge may hold both the offices of county and municipal justice court judge.

(3) The county legislative body may establish a single precinct or divide the county into multiple precincts to create county justice courts for public convenience.

(4) (a) The governing body may assign as many justice court judges to a court as required for efficient judicial administration.

(b) If more than one judge is assigned to a court, any citations, informations, or complaints within that court shall be assigned to the judges at random.

(5) A municipality or county may contract with any other municipality or municipalities within the county under Title 11, [Chapter 13](#), Interlocal Cooperation Act, to establish a justice court. A justice court established under Title 11, [Chapter 13](#), shall meet the requirements for certification under [Section 78-5-139](#). A justice court established under Title 11, [Chapter 13](#), shall have territorial jurisdiction as if established separately.

#### **78-5-103. Territorial jurisdiction - Voting.**

(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and includes all cities or towns within the precinct, except cities where a municipal justice court exists.

(2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.

(3) The territorial jurisdiction of county and municipal justice courts functioning as magistrates extends beyond the boundaries in Subsections (1) and (2):

(a) as set forth in [Section 78-7-17.5](#); and

(b) to the extent necessary to carry out magisterial functions under [Subsection 77-7-23\(2\)](#) regarding jailed persons.

(4) For election of county justice court judges, all registered voters in the county justice court precinct may vote at the judge's retention election.

#### **78-5-104. Jurisdiction.**

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except those offenses over which the

juvenile court has exclusive jurisdiction.

(2) Justice courts have jurisdiction of small claims cases under Title 78, [Chapter 6](#), Small Claims Courts, if the defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

**78-5-105. Jurisdiction of justice court and juvenile court.**

(1) Justice courts have jurisdiction over traffic misdemeanors and infractions committed by persons 16 or 17 years of age and that occur within the territorial jurisdiction of the court, except those offenses exclusive to the juvenile court under [Section 78-3a-104](#).

(2) If the traffic offense involves the conviction of a person 16 years of age or older but younger than 18 years of age for an offense under [Section 78-3a-506](#), the justice court judge shall notify the juvenile court of the conviction.

(3) The justice court has authority to take the juvenile's driver license and return it to the Driver License Division, Department of Public Safety, for suspension under [Section 53-3-221](#).

(4) Justice court judges may transfer matters within the court's jurisdiction under this section to the juvenile court for postjudgment proceedings according to rules of the Judicial Council.

**78-5-106. Justice court judge authority.**

Justice court judges:

(1) have the same authority regarding matters within their jurisdiction as judges of courts of record;

(2) may issue search warrants and warrants of arrest upon a finding of probable cause; and

(3) may conduct proceedings to determine:

(a) probable cause for any case within their jurisdiction; and

(b) an accused person's release on bail or his own recognizance.

**78-5-107. Place of holding court.**

(1) (a) County justice court judges may hold court in any municipality within the precinct but may exercise only the jurisdiction provided by law for county justice courts.

(b) County justice court judges may also, at the direction of the county legislative body, hold court anywhere in the county as needed but may only hear cases arising within the precinct.

(2) A municipal justice court judge shall hold court in the municipality where the court is located and, as directed by the municipal governing body, at the county jail or municipal prison.

**78-5-108. Trial facilities - Hours of business.**

(1) A justice court judge shall conduct all official court business in a courtroom or office located in a public facility which is conducive and appropriate to the administration of justice.

(2) Each county, city, or town shall provide adequate courtroom and auxiliary space for the justice court. The facility need not be specifically constructed for or allocated solely for the justice court if existing facilities adequately serve the purposes of the justice court.

(3) County and municipal justice courts shall be open and judicial business shall be transacted every day except as provided by law including the provisions of [Section 78-3-24](#) regarding court administration. The hours the courts are open shall be posted conspicuously at the courts and in local public buildings. The judges of county and municipal courts shall attend the court at regularly scheduled times. The clerk of the court shall attend the court at regularly scheduled times.

**78-5-109. Laws, ordinances, and reference materials provided by counties, cities, and towns.**



Each county, city, or town shall provide and keep current for each justice court in its jurisdiction a copy of the motor vehicle laws of Utah, appropriate copies of the Utah code, the justice court manual published by the state court administrator, state laws affecting local government, the county, city, or town ordinances, and other legal reference materials as determined to be necessary by the judge.

**78-5-110. Compensation and expenses - Clerical personnel.**

(1) The county, city, or town creating or maintaining a justice court shall provide and compensate clerical personnel to conduct the business of the court.

(2) The selection, supervision, and discipline of court clerical personnel shall be in accordance with local government personnel policies, with the concurrence of the justice court judge.

(3) Clerical personnel are governed by Title 52, [Chapter 3](#), regarding employment of relatives.

(4) The county, city, or town assumes the cost of travel and training expenses of clerical personnel at training sessions conducted by the Judicial Council.

**78-5-111. Justice court staff to be provided.**

(1) Each county, city, or town creating and maintaining a justice court shall provide:

(a) sufficient staff public prosecutors to attend the court and perform the duties of prosecution before the justice court;

(b) adequate funding for the costs of defense for persons charged with a public offense who are determined by the court to be indigent under Title 77, [Chapter 32](#); and

(c) sufficient local peace officers to attend the justice court when required and provide security for the court.

(2) The county attorney or district attorney may appoint city prosecutors as deputies to prosecute state offenses in municipal justice courts.

**78-5-113. Process to any part of the state - Service.**

(1) Process from a justice court may be issued to any place in the state.

(2) Subpoenas in any action or proceeding of a justice court may be issued to any place in the state.

(3) All warrants issued by a justice court for violation of any state law or local ordinance within a court's jurisdiction are directed to the sheriff, any constable of the county, or to the marshal or city police of the town or city.

**78-5-116. Disposition of fines.**

(1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, one-half to the treasurer of the local government responsible for the court and one-half to the treasurer of the local government which prosecutes or which would prosecute the violation.

(2) (a) For violation of Title 23, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.

(b) For violation of Title 73, [Chapter 18](#), the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.

(3) The surcharge established by [Section 63-63a-1](#) shall be paid to the state treasurer.

(4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of [Section 72-7-404](#) or [72-7-406](#) regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and distributed to the class B and C road account.

(5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is supplemental to the money appropriated under [Section 72-2-107](#) but shall be expended in the same manner as other class B and C road funds.

**78-5-117. Filing and docketing of abstract.**

(1) The judge, on the demand of a party in whose favor judgment is rendered, shall provide the party with an abstract of the judgment in substantially the form approved by the Judicial Council.

(2) The abstract may be filed in the office of the clerk of the district court of any county in the state but shall be docketed in the judgment docket of that district court.

(3) The clerk shall note the time of receipt of the abstract on the abstract and on the docket.

**78-5-118. Execution on judgment.**

From the time of the docketing in the office of the clerk of any district court execution may then be issued within the same time, in the same manner, and with the same effect as if issued on a judgment of the district court.

**78-5-119. Judgment not a lien unless so docketed.**

(1) A judgment rendered in a justice court does not create a lien upon any lands of the judgment debtor unless an abstract is filed and docketed in the office of the clerk of the district court of the county in which the lands are located.

(2) When filed and docketed, the judgment is a lien upon the real property of the judgment debtor that is not exempt from execution and is situated in that county for eight years from the date the judgment was entered unless the judgment is earlier satisfied.

**78-5-120. Trial de novo in district court.**

Any person not satisfied with a judgment rendered in a justice court, whether rendered by default or after trial, is entitled to a trial de novo in the district court of the county as provided by law. The judgment after trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

**78-5-121. Docket to be kept - Enumeration of entries required.**

Every justice court judge shall keep or cause to be kept a docket. The following information shall be entered in the docket under the title of the action to which it relates:

- (1) the title to every action or proceeding;
- (2) the object of the action or proceeding, and the amount of any money claimed;
- (3) the date of the service of the summons and the time of its return;
- (4) a statement of the fact if an order to arrest the defendant is made or a writ of attachment is issued;
- (5) the time when the parties or any party appears, or a party's nonappearance, if default is made;
- (6) minutes of the pleadings and motions in writing by referring to them, and if not in writing, by a concise statement of the material parts of the pleadings;

- (7) every adjournment, stating on whose application and to what time;
- (8) a demand for a trial by jury, when made, by whom, and the order for the jury;
- (9) the time appointed for the return of the jury and for the trial;
- (10) the names of the jurors who appear and are sworn;
- (11) the names of all witnesses sworn and at whose request;
- (12) the verdict of the jury and when received, or if the jury disagree and are discharged, the disagreement and discharge;
- (13) the judgment of the court including the costs included and when entered;
- (14) an itemized statement of the costs;
- (15) the time of issuing an execution and to whom, and the time of any renewals;
- (16) a statement of any money paid to the court, when, and by whom; and
- (17) the receipt of any notice of appeal, and of any appeal bond filed.

**78-5-122. Docket entries - Prima facie evidence.**

Entries in a justice court judge's docket under [Section 78-5-121](#), certified by the judge or his successor in office, are prima facie evidence of the facts stated.

**78-5-123. Docket index.**

A judge shall keep or cause to be kept an alphabetical index to the names of the parties to each judgment in his docket with a reference to the page of entry. The names of the parties shall be entered in the index by the first letter of the family surname.

**78-5-124. Delivery of docket and papers to successor.**

A justice court judge upon the expiration of his term of office shall deposit with his successor his dockets and all papers filed in his office and also those of his predecessors or any others in his custody. The dockets and papers shall be kept as public records.

**78-5-125. All papers issued, except subpoenas, to be filled out without blanks.**

Every paper made or issued by a justice court judge except a subpoena is valid only if issued without any blank space to be filled or completed by another person.

**78-5-126. Disposition of moneys received.**

Money received or collected on any process or order issued from a justice court shall be paid within seven days to the parties entitled or authorized to receive the money.

**78-5-127. Required annual training - Expenses - Failure to attend.**

(1) Prior to assuming office all justice court judges shall attend an orientation seminar conducted under the direction of the Judicial Council.

(2) All justice court judges shall attend the continuing education conducted under the supervision of the Judicial Council each calendar year.

(a) Successful completion of the continuing education requirement includes instruction regarding competency and understanding of constitutional provisions and laws relating to the jurisdiction of the court, rules of evidence, and rules of civil and criminal procedure as indicated by a certificate awarded by the Judicial Council.

(b) The county or municipality creating and maintaining a justice court shall assume the expenses of travel, meals, and lodging for the judge to attend education and training seminars conducted by the Judicial Council.

(3) Any judge not obtaining a certificate for two consecutive years may be removed from office

for cause under this section.

(4) The Judicial Council shall inform the Judicial Conduct Commission of the names of justice court judges failing to comply with this section.

**78-5-128. Determination of compensation and limits - Salary survey - Limits on secondary employment.**

(1) (a) Every justice court judge shall be paid a fixed compensation determined by the governing body of the respective municipality or county taking into consideration recommendations of the office of the state court administrator as provided in Subsection (2), but in no case may the salary for a justice court judge be an amount greater than 72% of the salary of a district court judge.

(b) The compensation shall be comprised of a monthly salary and shall be computed upon the number of hours, days, or other periods of time that the justice court judge is to be available to perform all judicial functions.

(2) (a) The state court administrator with the approval of the Judicial Council shall survey areas of the state relating to the functions and activities of the justice courts, taking into consideration the diverse economic factors of the various localities of the justice courts, and develop recommended monthly salaries. These recommendations shall be furnished to the governing bodies of the municipalities and the counties to assist them in determining salaries.

(b) The state court administrator may make studies concerned with the economic as well as administrative feasibility to encourage the various political subdivisions to utilize the same person or persons to act as justice court judges for their several jurisdictions and to assist political subdivisions desiring to enter into agreements for that purpose.

(3) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.

(4) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

(5) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.

(6) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

(7) Any judge who violates this section may be subject to removal by the Judicial Conduct Commission under [Section 78-7-28](#).

**78-5-129. Compensation - Annual review and adjustment.**

(1) The governing body of each municipality or county shall annually review and may adjust the compensation paid.

(2) The salary fixed for a justice court judge may not be diminished during the term for which the judge has been appointed or elected.

(3) A copy of the resolution, ordinance, or other document fixing the salary of the justice court judge and any adjustments to the document shall be furnished to the state court administrator by the governing body of the municipality or county.

**78-5-130. Monthly reports to court administrator and governing body.**

(1) Every justice court judge shall file monthly with the state court administrator a report of the

judicial business of the judge. The report shall be on forms supplied by the state court administrator.

(2) The report shall state the number of criminal and small claims actions filed, the dispositions entered, and other information as specified in the forms.

(3) A copy of the report shall be furnished by the justice court judge to the governing body in the municipality or county, or to the person or office in the county, city, or town designated by the governing body.

**78-5-132. Term of office for county court.**

(1) (a) The term of a county justice court judge is four years beginning the first Monday in February 1991.

(b) Judges holding office when this act takes effect or appointed to fill any vacancy hold office until reappointed or a successor is appointed and certified by the Judicial Council.

(2) (a) The term of office of a municipal justice court judge is four years, beginning the first Monday in February 1992.

(b) Judges holding office when this section takes effect or appointed to fill any vacancy hold office until reappointed or a successor is appointed and certified by the Judicial Council.

**78-5-134. Justice court judges to be appointed - Procedure - Report to Judicial Council - Retention election - Vacancy.**

(1) As used in this section:

(a) "Appointing authority" means:

(i) the chair of the county commission in counties having the county commission form of county government;

(ii) the county executive in counties having the county executive-council form of government;

(iii) the chair of the city commission, city council, or town council in municipalities having:

(A) the traditional management arrangement established by Title 10, [Chapter 3](#), Part 1; and

(B) the council-manager optional form of government defined in [Section 10-3-1209](#); and

(iv) the mayor, in the council-mayor optional form of government defined in [Section 10-3-1209](#); and

(b) "Local legislative body" means:

(i) the county commission or county council; and

(ii) the city commission, city council, or town council.

(2) Justice court judges shall be appointed by the appointing authority and confirmed by a majority vote of the local legislative body.

(3) (a) After a newly appointed justice court judge has been confirmed, the local legislative body shall report the confirmed judge's name to the Judicial Council.

(b) The Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program and upon the written opinion of the county or municipal attorney that the judge meets the statutory qualifications for office.

(c) A justice court judge may not perform judicial duties until certified by the Judicial Council.

(4) Upon the expiration of a county justice court judge's term of office the judge shall be subject to an unopposed retention election in accordance with the procedures set forth in [Section 20A-12-201](#).

(5) Upon the expiration of a municipal justice court judge's term of office a municipal justice court judge shall be reappointed absent a showing of good cause by the appointing authority.

(a) If an appointing authority asserts good cause to not reappoint a municipal justice court judge, at the request of the judge, the good cause shall be presented at a formal hearing of the local legislative body.

(b) The local legislative body shall determine by majority vote whether good cause exists not to reappoint the municipal justice court judge.

(c) The decision of the local legislative body is not subject to appeal.

(d) In determining whether good cause exists to not reappoint a municipal justice court judge, the appointing authority and local legislative body shall consider:

(i) whether or not the judge has been certified as meeting the evaluation criteria for judicial performance established by the Judicial Council; and

(ii) any other factors considered relevant by the appointing authority.

(6) Before reappointment or retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in [Subsection 78-3-21\(4\)](#).

(7) (a) At the conclusion of a term of office or when a vacancy occurs in the position of justice court judge, the appointing authority may contract with a justice court judge in the county or an adjacent county to serve as justice court judge.

(b) The contract shall be for the duration of the justice court judge's term of office.

(8) Vacancies in the office of justice court judge shall be filled as provided in [Section 20A-1-506](#).

**78-5-135. Fines, fees and forfeitures collected - Deposits and reports - Special account - Accounting.**

(1) (a) Municipal justice courts shall deposit within seven days, or more often if required by the governing body, all fines, fees, costs, and forfeitures collected in an account controlled by the treasurer of the municipality in which the court is located.

(b) The treasurer shall report to the city recorder the sums collected and deposited. The recorder shall then apportion and remit the collected proceeds as provided in [Section 78-5-116](#).

(c) The municipality shall retain all small claims filing fees including the governmental filing fee for actions filed by the municipality as provided in [Section 78-6-14](#).

(2) (a) County justice courts shall deposit within seven days, or more often if required by the governing body, all fines, fees, costs, and forfeitures collected to an account controlled by the treasurer of the county in which the court is located.

(b) The treasurer shall report to the county auditor the sums collected and deposited. The auditor shall then apportion and remit the collected proceeds as provided in [Section 78-5-116](#).

(c) The county shall retain all small claims filing fees including the governmental filing fee for actions filed by the county as provided in [Section 78-6-14](#).

(3) Money received or collected on any civil process or order issued from a justice court shall be paid within seven days to the party entitled or authorized to receive it.

(4) (a) With the approval of the governing body a trust or revolving account may be established in the name of the justice court and the treasurer for the deposit of money collected including bail, restitution, unidentified receipts, and other money that requires special accounting.

(b) Disbursements from this account do not require the approval of the auditor, recorder, or governing body.

(c) The account shall be reconciled at least quarterly by the auditor of the governing body.



**78-5-137. Justice court judge eligibility - Mandatory retirement - Service after retirement.**

- (1) A county justice court judge shall be:
  - (a) a citizen of the United States;
  - (b) 25 years of age or older;
  - (c) a resident of Utah for at least three years immediately preceding his appointment;
  - (d) a resident of the precinct for which chosen for at least six months immediately preceding appointment; and
  - (e) a qualified voter of the precinct for which chosen.
- (2) A municipal justice court judge shall be:
  - (a) a citizen of the United States;
  - (b) 25 years of age or older;
  - (c) a resident of Utah for at least three years immediately preceding appointment;
  - (d) a resident of the county in which the municipality is located or an adjacent county for at least six months immediately preceding appointment; and
  - (e) a qualified voter of the county of residence.
- (3) Justice court judges are not required to be admitted to practice law in the state as a qualification to hold office but shall have at the minimum a diploma of graduation from high school or its equivalent. This requirement does not apply to justice court judges holding office on July 1, 1989, who successfully complete continuing education requirements under [Section 78-5-127](#).
- (4) A justice court judge shall be a person who has demonstrated maturity of judgment, integrity, and the ability to understand and apply appropriate law with impartiality.
- (5) (a) Except as provided in Subsections (b) and (c), a county or municipal justice court judge shall retire upon attaining the age of 75 years.
  - (b) A county justice court judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February 1999, may not be a candidate in the 1998 judicial retention elections and shall retire on or before the first Monday in February 1999.
  - (c) A municipal justice court judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February 2000, may not be reappointed and shall retire on or before the first Monday in February 2000.
- (6) (a) A justice court judge whose tenure in office has terminated due to retirement and who is physically and mentally able to perform the duties of the office may hear a case as prescribed by rule of the Supreme Court.
  - (b) The retired justice court judge shall take and subscribe an oath of office only upon the first appointment. The retired justice court judge shall receive reasonable compensation for services as set by local ordinance of the municipality or county.

**78-5-138. Temporary justice court judge.**

If a justice court judge is absent or disqualified, the appointing authority may appoint another justice court judge currently holding office within the judicial district to serve as a temporary justice court judge. A retired justice court judge may also be appointed as a temporary justice court judge under rule of the Supreme Court.

**78-5-139. Requirements by Judicial Council for creating and certifying justice courts.**

- (1) The Judicial Council has the responsibility for promulgating and publishing minimum requirements both for the creation of new courts and the certification of existing courts. The council

shall also review requests for waiver of the minimum requirements and may authorize the creation of a court by waiving compliance with minimum requirements or by allowing for an extension of time to meet the minimum requirements.

(2) Existing justice courts shall be recertified at the end of each four-year term if they continue to meet the minimum requirements for the establishment of a new court. Any existing court which does not meet the minimum requirements may request a review from the council, which may authorize the recertification of the court by waiving compliance with minimum requirements or by allowing for an extension of time to meet those requirements.

**78-5-140. Dissolution of Justice Courts.**

(1) (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.

(b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.

(c) The municipality or county shall provide notice to the Judicial Council.

(d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.

(e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.

(2) (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.

(b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.

(c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.

(3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.



# RULES OF LAW

# RULES OF LAW

Litigation is the legal process to settle disputes between people, businesses, and government entities. Litigation in the United States takes one of three forms.

1. CRIMINAL LITIGATION: The procedure for prosecuting an individual who has committed an act that society, through its legislature, has deemed to be antisocial and a crime.
2. ADMINISTRATIVE LITIGATION: The process by which individuals, businesses, and administrative agencies resolve disputes before an administrative agency concerning the applicability, eligibility, and enforcement of an administrative agency's regulations.
3. CIVIL LITIGATION: Disputes that are neither criminal nor administrative are civil in nature.

**From the moment litigation is commenced until its final determination, its course is channeled and regulated by detailed rules. The purpose of these rules is to define the issues of law and the facts that are in dispute and to control the methods by which opposing parties may present factual and legal arguments in support of their respective positions.**

## ALL RULES OF PROCEDURE MUST BE CONSISTENT WITH THE FOLLOWING SOURCES OF LAW:

### CONSTITUTIONAL LAW:

The federal government and each state has constitutions that establish the basic principles of law. All other laws in the jurisdiction are limited by the constitution.

### LEGISLATIVE LAW:

Congress and state legislatures make laws referred to as “statutes”. Laws passed by local governments are called “ordinances”.

### COURT MADE LAW:

In handling a case, the judge rules on the matter by stating his opinion regarding the essential facts of the case and his interpretation of law applied to those facts. These opinions, especially those of appellate courts, are known as case law and are compiled for future reference by the courts.

### COMMON LAW:

This body of law evolved from the opinions of the English Courts over the centuries since the Norman conquest. The early English settlers brought to America these laws. Since that time, the common law has changed through judges who have shaped, developed, and interpreted the common law to resolve modern problems.

In modern times courts have established comprehensive rules, without reference to particular cases, governing virtually every phase of the litigation process. In establishing these rules, courts have acted either pursuant to authority expressly granted to them by statute or pursuant to their inherent authority to regulate their own activities. It is usually the highest court that writes these rules both for itself and for the lower courts in the same jurisdiction. Local courts are permitted to promulgate rules concerning certain limited details of procedure before them. The only restriction placed on these local rules is that they may not be either inconsistent or in conflict with the higher courts rules.

These rules are generally referred to as Rules of Civil Procedure.

The Federal Rules of Civil Procedure apply only to the federal courts in the United States although they have been adopted either totally or in part, or widely copied by many states.

Rules of civil procedure establish and regulate, stage by stage, the nature and requirements of the litigation process, especially in the time-consuming pretrial stages. These rules only govern procedure (as distinguished from the substantive rights of a party).

## PROCEDURAL RULES:

Rules adopted by the courts (and/or judicial counsels) to assist with all aspects of litigation.

The Federal Constitution is the primary source of law and supersedes state constitutions. State constitutions supersede legislative law. Legislative law supersedes court-made or common laws and common law supersedes procedural rules. Lower law cannot be in conflict with the higher law.

The purpose of these rules is to define the issues of law and facts that are in dispute and to control the methods by which the opposing parties may present factual and legal arguments in support of their respective positions. These rules are made by the courts by the authority given them through statutes. The highest court writes these rules for itself and for lower courts in the same jurisdiction.

Local courts are also permitted to make local rules which are limited to details of procedure before these local courts. These local rules cannot be inconsistent or conflicting to the higher court rules. These bodies of rules are referred to as “Rules of Civil Procedure”. If an attorney does not follow these rules, much harm could come to the outcome of his client’s case.

JURISDICTION  
&  
VENUE

## TABLE OF JURISDICTION

| COURT            |    | ORIGINAL<br>JURISDICTION        |    | APPELLATE<br>JURISDICTION  |
|------------------|----|---------------------------------|----|--|
| SUPREME COURT    | 1. | Questions from<br>Federal Court | 1. | Certiorari to Court of<br>Appeals  |
|                  | 2. | Extraordinary Writs             | 2. | Lawyer Discipline  |
|                  |    |                                 | 3. | Judicial Conduct<br>Commission   |
|                  |    |                                 | 4. | First Degree or<br>Capital felony  |
|                  |    |                                 | 5. | PSC, Tax<br>Commission, State<br>Engr., Brd of State<br>Lands, Brd of Oil,<br>Gas & Mining |
|                  |    |                                 | 6. | Statutes held to<br>unconstitutional   |
| COURT OF APPEALS | 1. | Extraordinary Writs             | 1. | Administrative<br>Agencies   |
|                  |    |                                 | 2. | District Court   |
|                  |    |                                 | 3. | Juvenile Court   |
|                  |    |                                 | 4. | Criminal except: First<br>degree or capital<br>felony                                      |
|                  |    |                                 | 5. | Domestic Relations   |
|                  |    |                                 | 6. | Transfers from<br>Supreme Court  |
| DISTRICT COURT   | 1. | All Criminal Felonies           | 1. | Justice Court  |
|                  | 2. | All Civil Actions               |    |  |
|                  |    | a. Real Property                |    |  |
|                  |    | b. Divorce                      |    |  |
|                  |    | c. Child Custody                |    |  |
|                  |    | d. Probates                     |    |  |
|                  | 3. | Extraordinary Writs             |    |  |

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|                |    |                                |    |      |
|----------------|----|--------------------------------|----|------|
| JUVENILE COURT | 1. | Criminal Acts by Minors        | 1. | None |
|                | 2. | Status Offenders               |    |      |
|                | 3. | Neglected or Dependant Minors  |    |      |
|                | 4. | Termination of Parental Rights |    |      |

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|               |    |   |    |      |
|---------------|----|---|----|------|
| JUSTICE COURT | 1. | Class B & C Misdemeanors                              | 1. | None |
|               | 2. | Criminal Infractions                                  |    |      |
|               | 3. | Small Claims when authorized by<br>local governments. |    |      |



## TYPES OF JURISDICTION

### SUBJECT MATTER JURISDICTION

Each court has authorization from the laws of the state or laws of the federal constitution to hear and resolve disputes before it. The authorization could be limited, or more general. For example, a court empowered to hear tax matters cannot hear a personal injury suit.

### GENERAL JURISDICTION

A court of general jurisdiction can handle:

- Probate
- Personal injury
- Criminal
- Domestic
- Civil (unlimited dollar amounts)

This jurisdiction must be satisfied, it cannot be waived by the parties. A court on its own motion, may dismiss a case for lack of subject matter jurisdiction.

### LIMITED JURISDICTION

A court has limited jurisdiction when its authority to hear and decide cases is limited to specific types of cases. For example: a court labeled traffic court can hear only traffic cases. Limited jurisdiction becomes exclusive jurisdiction when a court is the only court permitted to handle a specific type of case.

### PERSONAL JURISDICTION

Personal jurisdiction occurs when a court has power over the particular person named in the lawsuit. Rules or statutes have been enacted to deal with this issue by determining when, where, and under what circumstances a person may be made a party to a lawsuit and compelled to defend at the risk of being bound by an adverse decision. The term person includes corporations and partnerships. The need for this type of jurisdiction is to see that the losing part cannot refuse to accept an unfavorable decision and seek to start a new lawsuit. To obtain personal jurisdiction over a plaintiff, is simply where the plaintiff files the lawsuit. To obtain personal jurisdiction of the defendant is by proper “service of process”. The long-arm statutes allow a non-resident of a state to be brought into a lawsuit outside of their domicile. Personal jurisdiction can also be obtained when the defendant appears in court, or his attorney files a pleading in the case and fails to object to jurisdiction of the person.

### GEOGRAPHICAL JURISDICTION

Geographical jurisdiction is different from venue and means that the court is empowered to hear cases that arise within specified geographical boundaries.

## VENUE

A concept related to jurisdiction, yet distinct from it, is venue. Venue does not address the question of which court has subject matter or personal jurisdiction: it determines which court should hear a case, based on:

1. Convenience for the parties
2. Location of witnesses
3. Location of evidence
4. Place where the event in question happened
5. Fairness.

Venue is based on a traditional concept of “neighborhood” and the location of the event that triggered the lawsuit.

When considering where a lawsuit should be filed, which court or courts have jurisdiction and what court or courts have the appropriate venue, the attorney defending the lawsuit must always be ready to challenge the jurisdiction of the court chosen by the opposing attorney.

In order for a court or courts to have power to bind the parties, it must have:

1. Subject matter jurisdiction
2. Personal jurisdiction
3. Venue

If the action is brought in a county or district where venue is improper, the case could go forward provided the defendant stipulates to hearing the matter there or fails to object to improper venue.

## JURISDICTION

JURISDICTION is the power or authority of a court to hear and decide the questions of law and/or facts presented by a lawsuit.

Most courts have geographical jurisdiction, meaning that they hear cases that arise within specific geographical boundaries.

Courts also have personal jurisdiction or power over the particular person named in the lawsuit.

Each court has some form of subject matter jurisdiction. This jurisdiction is defined by the nature or subject of the lawsuits handled by that court. Examples are juvenile or appellate cases.

When a court has general jurisdiction it can hear all types of cases. Most states have trial courts of general jurisdiction where subject matter jurisdiction is assumed unless one party can demonstrate that the court does not have the necessary subject matter jurisdiction.

A court has limited jurisdiction when its authority to hear and decide cases is limited to specific types of cases. A court specifically labeled traffic court can hear only traffic cases. Limited jurisdiction becomes exclusive jurisdiction when a court is the only court permitted to handle a specific type of case.

Frequently the jurisdiction of a court is limited by the amount of money claimed in the lawsuit. This monetary value is referred to as the jurisdictional amount.

A court's authority over people, corporations and property is limited to that court's jurisdiction. If a court acts outside of or beyond its jurisdiction, it acts beyond its authority - beyond its power. The government that creates a court establishes the court's jurisdiction.

Ordinarily one thinks of the courts as one of three separate branches of government (1) Judicial, (2) Legislative and (3) Executive. In the Federal government, only the United States Supreme Court is entirely separate. It was created by the Constitution, and the Constitution establishes its authority. Its powers cannot be abridged or expanded by congress.

The lower courts in the federal system, (Federal District Courts - also known as the trial courts) and the Circuit Courts of Appeals were created by Acts of Congress. Congress determined their organization, function and the scope of their jurisdiction. Separate and independent, the three branches of government must work together. The spirit of cooperation was manifested by the congress when it recognized that the lower courts should operate pursuant to rules established by the Supreme Court and enacted enabling legislation authorizing the Supreme Court to promulgate the Federal Rules of Civil Procedure.

The question of whether the court has jurisdiction usually is divided into two separate questions:

1. Does the Court have the authority over the subject matter of the lawsuit?
2. Does the Court have authority over the parties to the lawsuit?

# CRIMINAL/TRAFFIC PROCEDURES

## CRIMINAL ACTIONS

Criminal actions can begin with an arrest or a citation. An arrest under Utah Law is “an actual restraint of the person arrested or submission to custody.” An arrest can be accomplished by a peace officer or a citizen.

While a warrant of arrest, or arrest may be initiated by a peace officer on a criminal charge, an officer may also release the person charged with a Class B or C misdemeanor criminal citation on his/her signature or promise to appear within 14 days.

If the person charged, fails to appear within the time limits set by law, the Court may proceed with a notice of non-compliance. Upon issuance of this notice, a fee of \$20.00 may be assessed. (See Code of Judicial Administration Rule 4-701)

Once a person has been arrested and taken to jail, the person will be booked. Booking is the formal procedure of admitting him/her into jail. Next, he/she will be fingerprinted, given the opportunity to make phone calls and be interviewed.

The interview does not necessarily mean the arrested person will be released on his/her own recognizance. They may be required to post bail before getting out of jail. The jail will generally use a Uniform Bail Schedule for traffic and criminal offenses. If the person cannot post bail, then they remain in jail until they can be brought before a Judge.

The formal charging of the arrested person does not occur until an information has been filed with the court. An information is the charging document which initiates court proceeding and must be sworn to by the person who makes and subscribes an affidavit. This person is called the affiant.

The justice courts deal with three classes of misdemeanors. They are: Class B, C, and Infractions. These are acts that violate public laws. They are usually punishable by a fine or short term in the county jail. The bail schedule designates which charges require a mandatory appearance in court before the Judge.

All mandatory cases require an appearance before a judge. At that time the judge reads the information alleging the charges to the defendant. The defendant is advised of his rights and then enters a plea of guilty, not guilty, or no contest. If the defendant has been released from jail on bail or on his/her own recognizance and fails to appear for an arraignment, a warrant of arrest can be issued and the bail may be forfeited. Failure to appear fees on arrest warrants may not exceed \$70.00. (This includes the \$20.00 fail to comply assessment) (Again see Code of Judicial Administration Rule 4-701)

Bondsman procedures may be ordered by the court on matters in which the defendant posted a bond through a bondsman. A warrant of arrest may still be issued, but the bondsman is also required to produce the defendant or forfeit the bond he filed guaranteeing the defendant's appearance. The bondsman procedure is the responsibility of the prosecution. The court's main role in this action is to notify the prosecutor of the defendant's failure to appear and bondsman

status. The steps for bail forfeiture when there is a bondsman are as follows:

1. When a defendant fails to appear, the clerk sends notice of the nonappearance to the surety within 30 days.
  - a. Notice can only be sent if the court “issues a bench warrant or directs that notice be given.”
  - b. Notice must be sent by certified mail, return receipt requested. A copy should be sent to the prosecutor.
  - c. If the clerk does not send notice, the prosecutor has 7 days after the 30 days period to send notice.
2. If notice is not sent, the surety has no further obligations under the bond.
3. The surety has 6 months from the date of nonappearance to produce the defendant.
  - a. The surety can apply for one 60 day extension.
4. After 6 months, the prosecuting attorney can move for entry of judgment.
5. The court shall enter judgment without further notice to the surety if the requirements for notice have been complied with and the surety has not produced the defendant.
6. The clerk shall enter the judgment on the civil docket and collection may begin immediately.
7. If the defendant is in jail and can’t be brought to court by the surety, the surety can be exonerated from the bond (less costs) if the defendant can be extradited or otherwise brought to court.

If the defendant pleads not guilty, the court may hold a pre-trial conference. The purpose of the conference is to consider those matters that will promote a fair and expeditious trial and to determine the necessity of a trial.

The prosecution and defense may enter into “plea bargaining.” This procedure consists of one party making an offer of reducing a charge to a lesser charge - or dismissing “lesser” charges in exchange for a plea to a “greater” offense. The other party then determines whether they will accept this offer.

The defendant has a right to a jury trial in all Class B and C misdemeanors. The defendant must first file written notification requesting a jury trial, received by the court ten (10) days prior to the scheduled trial date. All infractions will be tried in a bench trial setting without a jury.

After a verdict of guilty has been reached by the court or a plea of guilty has been entered by the defendant, the court may set sentencing in not less than two (2) days nor more than forty-five (45) days after the verdict or the plea is entered. If the defendant requests, he/she may waive the

time for sentencing and be sentenced the day he/she is convicted.

A person who is convicted of a :

Class B Misdemeanor can be fined up to \$1,850.00 and/or six (6) months jail.

Class C Misdemeanor can be fined up to \$750.00 and/or ninety (90) days jail.

An infraction can be fined up to \$750.00 with no jail time imposed.

The defendant has a right to appeal the court's decision within thirty (30) days after the entry of sentencing.

## TRAFFIC ACTIONS

Traffic citations are issued by law enforcement agencies to the person violating the city, county, or state traffic code. Upon receipt of the citation from the law enforcement agencies, a court clerk must give the citation a docket number and/or case number and reflect the date the citation was received on the docket and/or citation. The citation is docketed, then filed.

A defendant has five (5) to fourteen (14) days to make an appearance or forfeit bail by mail on a traffic citation. Upon the defendant's appearance at the counter, the clerk must determine the defendant's intention with regards to the citation. If the charge does not require a mandatory court appearance then the defendant has the following options:

1. Appear before Judge, enter not guilty plea and have trial date set.
2. Appear before Judge, enter guilty or no contest plea and be sentenced.
3. Pay voluntary bail forfeiture which can be arranged with clerk.

Traffic cases requiring a mandatory court appearance are handled the same as criminal cases. If the defendant pleads guilty or no contest, the judge determines sentence and the file is processed accordingly. The defendant cannot resolve the case through voluntary bail forfeiture or with the clerk prior to court.

When a defendant requests to go to court, the court clerk sets a court date. After the defendant has been to court, the clerk takes the proper action regarding the case. If the defendant is found guilty the clerk should send the conviction or plea to the Driver License Division regarding points or revocation. Payment of fine will be determined by the Judge. If the defendant is found not guilty the case will be closed.

Files must be checked periodically for citations where a defendant has failed to appear within the fourteen (14) days. The statute allows the court to choose between two options: 1) The court may issue a warrant of arrest and increase the bail as provided in Rule 4-701 or, 2) the court may have the prosecutor issue an information for Failure to Appear as provided in UCA 77-7-19. If the most serious charge is an infraction a warrant cannot be issued.



Files must also be checked for citations not paid after a defendant has appeared in court and been assessed a fine with a specific due date. A notice of Failure to Pay is sent to the defendant and then he/she has a specific time period to make payment or a bench warrant may issue.

### RESPONSIBILITIES OF A CLERK ON MANDATORY COURT APPEARANCES (i.e. information & summons; bail posted at jail, etc):

1. File the Information, give it a docket/file number and put it in a file folder. Bail bond, cash bail or pre-trial release forms would be included. Calendar the case for the date specified.
2. A calendar is then pulled for each court session.
3. The clerk goes into court with the judge and enters into the docket brief minutes of what occurs. If the defendant pleads guilty, then the clerk notes that and records the sentencing if it occurs at that time. The clerk would calendar any subsequent date for sentencing or hearing also.
  1. The clerk may then have to prepare a commitment order for the jail, if the court so orders the defendant incarcerated.
  2. The clerk should prepare a judgment and sentence, one for the file and one for the defendant. Some prosecutors will request a copy for their file also. If the defendant is placed on supervised probation a copy of the sentence should be given to Adult Probation and Parole. If the defendant is ordered to counseling, a copy of the sentence and a release of information should be given to the counseling center chosen.
4. All information should be put into a computer or placed in written form in a docket book, so that information is readily accessible to anyone wanting to find out what has happened to the case - of if there are questions from other authorized agencies.
5. If the fine has not been paid, or the defendant has failed to comply with any order of the court, an Order to Show Cause is issued. This is to be served on the defendant by the Sheriff's Office, a County Constable, or the Court Bailiff. This gives the defendant time to respond in court and if they fail to do so a Bench Warrant may be issued by the Judge. The person will not need to appear if the fine is paid in full and they have complied with all the orders of the court before the date on the Order to Show Cause.
6. A Bench Warrant is issued when a person has failed to comply with a lawful order of the Court, i.e., to pay a fine, complete courses scheduled, or failure to respond to an Order of the Court.
7. An Arrest Warrant is issued when a person has failed to appear in court for arraignment. The Arrest Warrant must include a probable cause statement and an information sworn and signed by the clerk, stating that the defendant has failed to appear in court or post bail on the matter. The amount of bail on an Arrest Warrant is taken from the Uniform

Bail Schedule.

## FELONY PRELIMINARY HEARINGS

Due to the location of some courts and the lack of a primary district court in those locations, some justice courts will be holding preliminary hearings on felony matters.

If a defendant is charged with a felony, he/she is advised of his/her right to a preliminary hearing and a date is fixed at the first appearance before the Judge. If the prosecuting attorney consents, the defendant can waive his/her right to a preliminary hearing. There is no preliminary hearing available in a misdemeanor case.

The preliminary hearing is to be held within a reasonable amount of time. If the defendant is in custody for the offense charged, it shall occur no more than ten (10) days after the first appearance before the judge, and no later than thirty (30) days after the first appearance before the judge, if he/she is not in custody. The purpose of the preliminary hearing is to require the State to prove to the Court that there is probable cause that the defendant committed the offense of which he/she is accused. It does not consist of a full trial. The State may present evidence and provide any other information to the court that probable cause does exist. The defendant may also testify and present witnesses and evidence to show that he/she did not commit the crime. After reviewing the evidence, the Judge must determine whether or not he/she believes that probable cause exists to show that the crime charged has been committed and that the defendant committed the crime. If the Judge finds that probable cause exists, the defendant will be bound over to the District Court. If the Judge finds that probable cause does not exist, the Judge shall dismiss the information and release the defendant. A Jury trial is not a part of the preliminary hearing process.

## STATUTORY DUTIES OF THE CLERK

The Code of Judicial Administration Rule 3-303 contains several rules pertaining to justice court clerks. The Utah Code Unannotated, 1953 as amended, Title 7B, Chapter 5 gives duties and responsibilities for justice courts in general. However, these statutes are not all inclusive in nature and the clerk should familiarize himself/herself as completely as possible with the many other sections of the code which apply to specific areas of his/her office.

## COURTROOM DUTIES

A court clerk should be present in person at all sessions of the court. He/she should take care of all files, dispositions, and exhibits which are to be used during the day in court.

### Convening Court

Before court is ready to begin, the clerk should see that all parties and counsel are in the court ready to proceed and then inform the judge. When the judge makes his appearance in the courtroom, the clerk or the bailiff will announce the following:

“Everyone rise, please. The \_\_\_\_\_ Justice Court for the City of \_\_\_\_\_, is now in session with the Honorable Judge \_\_\_\_\_ presiding.”

After reciting the foregoing opening, the judge may instruct everyone in the courtroom to be seated or may have previously instructed the clerk to do so.

When the judge declares a recess during the court proceedings, the clerk will stand and clearly announce the recess as stated by the court, i.e., “Court will be in recess for \_\_\_\_\_ minutes. Please stand.” When the judge is ready to re-enter the courtroom the clerk or bailiff will announce “Please rise. Court is reconvened. The Honorable Judge \_\_\_\_\_ presiding.” When the judge is seated, the clerk will announce: “You may be seated.”

Other duties of the clerk in the courtroom consist of:

### Oaths

Another of the clerk’s in-court duties is to administer oaths to various participants in the court process. An oath is a solemn attestation that the person taking the oath will tell the truth when giving testimony or sincerely intends to perform a specified task. Before the participant begins his/her function in the proceeding, the clerk asks the person to raise his/her right hand, and the clerk does likewise. Then the clerk states the oath, and the person responds with “yes” or “I do.”

It is important that the clerk administering the oath speak clearly and not too rapidly and, if possible, maintain eye contact with the person taking the oath. This tends to impress upon him/her the seriousness of what he/she is saying and enhances the dignity of the court proceeding for other persons who are present in the courtroom. The oaths may vary slightly in different courts depending on the preference of the judge. It is recommended that each oath be typed on a card and kept at the clerk’s station in the courtroom for ready reference. Following are suggested formats:

### OATH TO WITNESSES:

You do solemnly swear that the testimony you shall give in this case shall be the truth, the whole truth, and nothing but the truth, so help you God.

When there is a jury trial, two oaths to the jury are administered:

### OATH TO THE JURY ON VOIR DIRE:

You and each of you do solemnly swear that you will well and truly answer such questions as may be put to you touching your competency to serve as juror in the case now before this court, so help you God.

### OATH TO JURY: (upon retiring to deliberate)

You and each of you do solemnly swear that you will well and truly try this issue before the

court, and a true verdict render according to the evidence, so help you God.

If a bailiff is in charge of the jury, the following oaths are applicable:

OATH TO BAILIFF: (upon jury retiring to deliberate)

You do solemnly swear that you will take charge of this jury and take them to some private and convenient place where they may deliberate upon their verdict, allowing no one to speak to them nor do so yourself unless so ordered by the court, and to return them into court when they have so reached a verdict or when so ordered, so help you God.

OATH TO BAILIFF: (if an empaneled jury is taken from court premises for a meal)

You do solemnly swear that you will keep this jury together and take them to some convenient eating establishment, allowing no one to speak to them about the issues of this trial, or do so yourself, and to subsequently take them to some private and convenient place where they may deliberate upon the issues of this case, allowing no one to speak to them nor do so yourself unless so ordered by the Court, and to return them into court when they have so reached a verdict or when so ordered, so help you God.

OATH TO BAILIFF: (if jury is ordered to view premises)

You do solemnly swear that you will take charge of this jury empaneled and conduct them to the place which is designated by the court, and that while they are absent for that purpose you will not permit any person to speak to them or do so yourself on any subject connected with this trial, and return them into court without unnecessary delay, so help you God.

When an attorney requests fees be granted, the following oath may be given:

OATH AS TO REASONABLENESS OF ATTORNEY'S FEES:

You do solemnly swear that the attorney's fees requested by you are reasonable attorney's fees, so help you God.

When a witness is being questioned with respect to his or her financial status, the following oath may be given:

OATH AS TO FINANCIAL STATUS:

You do solemnly swear that you will truthfully answer such questions as may be put to you concerning your financial status, so help you God.

If an interpreter is used in court, he or she is sworn as follows:

OATH TO INTERPRETER:

You do solemnly swear that you will truly, to your best understanding and ability, interpret as between witnesses, court and counsel from the \_\_\_\_\_ tongue to the English tongue, and from the English tongue to the \_\_\_\_\_ tongue in the case now before the court, so help you God.

Under certain circumstances oaths are given with respect to written documents:

#### OATH AS TO INFORMATION CONTAINED IN WRITTEN DOCUMENTS:

You do solemnly swear that the facts you have set out in this \_\_\_\_\_ are true to the best of your knowledge, information and belief, so help you God.

#### EXHIBITS

In all trials and motions in which exhibits are offered, particular care should be taken concerning them. The clerk is solely responsible for all exhibits after they have been marked. The exhibits should be carefully and clearly marked in sequence. They should be marked by the number, the case number noted and the party in whose behalf they are offered. Exhibits come in many sizes, shapes and various materials. If it is impossible to mark the exhibit in the above-mentioned way, it may be placed in an envelope which can then be marked appropriately.

When an exhibit is marked and not received into evidence, it may be retained by the clerk for the purpose of completing the record in case of appeal and should be handled with all other exhibits except that it must not go to a jury when the jury retires for its deliberations.

In the event of a re-trial or exhibits being used from another case, markings from the other trial or case should be ignored. Do not alter or destroy previous markings. These exhibits should be treated as new exhibits, giving the case number and another mark which applies to the trial at hand.

During trial, valuable and negotiable exhibits should be locked in a safe or exhibit room at noon, recess or overnight. Particular attention should be paid to narcotics and guns. After trial, important and valuable exhibits must be locked in the safe. The clerk is charged with the safe-keeping of all exhibits and should not allow them out of his/her possession except by order of the court.

An exhibit sheet should be kept by the clerk during the course of the trial. The exhibit sheet should contain the number of the exhibits, whether they were received in evidence or not and an adequate description sufficient to properly identify the exhibit so that one is not confused with another.

No exhibit should be released from the custody of the clerk unless upon order of the court or unless the court pursuant to stipulation or motion directs the clerk to return the exhibits to the party's attorney. A minute entry should be made reflecting such a release and a receipt should be obtained from the person withdrawing the exhibit. However, Rule 4.7 provides that counsel shall withdraw all exhibits within 3 months of final disposition of the case.

## MINUTE ENTRIES

The minutes constitute the record of actions and proceedings of the court. While justice courts are not courts of record, it is a good idea to get in the habit of keeping good notes of trial and other in-court hearings. It is not necessary for the clerk to record in written form all that is said by either party or judge in the courtroom. But it is necessary the he/she keep a record of actions taken by the court in each case presented to the court. This is sometimes difficult for the inexperienced clerk since there is usually much said in court which is not necessary for the clerk to record in his/her minutes. However, the clerk should make sure some minute entry is made of each and every case in which a ruling is made. If in doubt, the clerk should consult the judge as to what the order of ruling was to ensure that the minute entry is worded in a fashion properly reflecting the order of the court.

It is suggested that the minute entries in general should contain the following:

1. Title of court
2. Name of judges, clerk and bailiff
3. Date
4. Time court convenes
5. Case number & title
6. Issue before the court i.e. trials, motions, etc.
7. Appearances - attorneys present
8. Default orders entered
9. Appropriate stipulations
10. Juries - state name & seating order
11. Name of witnesses & by whom called, if rebuttal, recalled, or surrebuttal
12. Exhibits- by whom offered and received
13. Disposition or rulings on issues or cause before the court.

## PROCEDURE DURING A TRIAL

The clerk or bailiff would instruct the courtroom to rise and open court. The clerk or bailiff would then read the case pending before the court, if the judge so desires. It would be acknowledged that all parties are present and prepared to proceed or whether motions need to be entertained before proceeding to trial. The clerk would swear witnesses, take minutes, keep the evidence and any further direction as required by the Judge.

## PROCEDURE DURING A JURY TRIAL

The bailiff would seat the prospective jury according to manner accepted by the prosecutor, defense counsel and Judge. The options are to seat the prospective jurors according to the venire or to draw their names and seat them in random order. After court has been called to order as in the trial phase above, the prospective jurors are introduced to the procedures of the court and personnel by the Judge. The prospective jurors are then sworn touching their competency to answer questions asked of them in regards to serving as jurors. The court would then question the prospective jurors generally and allow voir dire questions by each counsel. If a prospective juror is excused for cause - (exhibiting prejudice) the court would order it at this time. After the

jurors are excused for cause, the peremptory challenge is exercised by each attorney in the case. Each attorney is allowed three perempts - this is a challenge in which no cause is necessary. (It is suggested that between 11 and 16 jurors are called for each jury trial scheduled.)

The final jury is then seated with the peremptory challenges being excused. The top four remaining names on the list would be the empaneled jury. The jury is sworn at this time, and from her until the verdict, the Judge should answer all questions and give all directions to the jurors. Each counsel then gives their opening statement. The prosecution would then proceed with the body of the case. The clerk at this time, would administer oaths and mark exhibits. Once the prosecution has put on their case and rested, the defense counsel would then put on their case. Again, the clerk would swear witnesses and mark any defense exhibits. After the defense has rested their case, the court would instruct the jury with the jury instructions that were prepared prior to the trial.

After the jury is instructed, each counsel would give his/her closing arguments. At this point the jurors are sworn, if they were not previously and the bailiff is sworn. The evidence collected and accepted into evidence, the jury instructions and any other forms ordered by the court are given to the bailiff, who then takes the jury to a selected room for their final deliberations. The clerk should make note of the time the jury is excused and when they return.

In Utah, a criminal case requires a unanimous verdict. If a jury cannot arrive at a unanimous verdict within a reasonable period of time, the judge must dismiss the jury and the case may have to be retried. If the jurors cannot reach a unanimous decision it is called a hung-jury.

When the jury returns, the verdict is collected by the bailiff from the selected foreperson and handed to the court. The Judge reviews the verdict to insure it is in proper order and then hands the verdict to the clerk. The clerk would then rise and read the verdict in open court. If the verdict is guilty - the jury is excused and sentence is executed by the court according to normal procedures. If the verdict is not guilty - the defendant is released and if cash bail is posted - the court will order it returned to the defendant. Any bond issued would also be exonerated by the Court.

## JURY SERVICE

Misdemeanor criminal cases will be set for jury trial upon the written request of a defendant and/or defense counsel. Demands for criminal jury trial must be filed ten (10) days prior to the trial. In felony cases, the cases are automatically set for jury trial unless the defendant waives the right to a jury. (Felony trials are held in District Court)

## WHO IS QUALIFIED FOR JURY SERVICE?

Depending on the District you are in, the jury list will come from the District Court or the Administrative Office of the Courts. (Pursuant to Section 78-46-12 (1)(2)(3). Upon receiving the prospective jurors' names, the jury clerk or the clerk of the court mails each prospective juror a juror qualification form along with instructions for completing the form. The form must be completed and returned within ten (10 ) days after receipt, pursuant to Section 78-46-12 (4) (5)

U.C.A. If you are required to obtain the jury list from the AOC the number is 801-578-3850. They require two weeks notice. If you obtain the list from the District Court the juror qualification may already have been done by the District Court.

The Administrative Office of the Courts is required to develop a standard form for the qualification of the jurors. This form may then be forwarded to all selected juror names for completion.

### COMPENSATION

Section 21-5-4 U.C.A. authorizes payment of \$18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance. The juror will be paid for reporting for jury duty on the first day, whether the juror is actually selected to serve as a trial juror or is excused during the selection process. If jurors travel more than 50 miles one way, from their home to the court, they will be paid \$1.00 for every 4 miles in excess of 50 miles traveled in going only, regardless of county lines.

### SELECTION OF JURORS

After prospective jurors have answered and returned the questionnaires previously sent to them, the qualified jurors are summoned to appear in court. If you obtain your list of names from the District Court they will only give you the names of pre-qualified jurors. For Class B and C misdemeanor cases approximately twelve jurors are called from whom four jurors are selected to try the case.

### WARRANTS

A warrant is a document authorized by a judge which gives a police officer the power to arrest a person for a public offense.

1. If after the filing of an information it appears that there is probable cause to believe that an offense has been committed and that the accused (defendant) has committed it, the judge shall issue a warrant of arrest or a summons that requires the appearance of the defendant.
2. The Judge may choose to issue a summons in lieu of a warrant if there is reason to believe the following:
  - a. There is no substantial danger of a breach of the peace or injury to persons or property.
  - b. There is no danger to the community.
3. The warrant should include the following:
  - a. The defendant's full name
  - b. Last known address
  - c. Date of birth
  - d. Driver license number (if known)



- e. Court docket number
- f. Citation number
- g. Date of violation
- h. Section violated and description
- i. Reason for warrant - fail to appear for arraignment, trial, written promise to pay or appear, supplemental hearing, order to show cause, etc.

(Utah Court Rules Annotated - Rules of Criminal Procedure, Rule 6)

A **Warrant of Arrest** may be issued in cases where the defendant has failed to appear in response to a summons or citations or thereafter when required by the court. When a warrant of arrest is issued, the amount of bail shall be fixed by the Judge and stated on the warrant.

A **Bench Warrant** may be issued after the defendant has appeared before the Judge (or bench) and fails to reappear, for sentencing, a court ordered hearing, etc.

#### UNIFORM FINE/BAIL SCHEDULE

(Utah Code Rules Code of Judicial Administration 4-701) In traffic cases when the defendant has failed to appear, the bail may be increased by \$20.00 when a delinquent notice is sent and increased by \$50.00 when a warrant is issued.

#### CONTEMPT ACTION BY COURT

U.C.A. 78-21-10 Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charge. If the court finds the person guilty of the contempt, a Justice Court Judge may punish for contempt by a fine not to exceed \$100.00 or by imprisonment for one day, or both.

The warrant shall be executed by a peace officer, and may be executed at any place within the State. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the defendant of the offense charged and the fact that the warrant has been issued.

The agency serving the warrant shall make return of service to the court as soon as possible. If the court recalls the warrant without benefit of service, the court is responsible for obtaining the original and all copies issued for execution of service. Failure to do this could cause the warrant to be served and the court may be liable for civil damages.

#### PROCESS SERVING

The following section describes how court papers are served or delivered to the appropriate individuals.

#### SHERIFF

The sheriff is charged with the obligation of serving all process and notices in the manner

prescribed by law. The sheriff is under a statutory mandate to serve all process that is properly delivered to him/her for which costs have been prepaid, which is proper on its face and which has been duly executed by competent authority. (UCA 17-22-2(9))

## CONSTABLE

All writs and process, including executions upon judgments, issued out of district or justice courts may be served by any constable of the county. (Utah Rules of Civil Procedure 4-d)

## PRIVATE PROCESS SERVER

See Rules of Civil Procedure Rule 4 (e)

## RETENTION OF COURT RECORDS

Records that are determined to be of a permanent nature shall be preserved and retained by the clerk of the court permanently in the form of the original record, microfilm or another permanent copy.

Courts using any type of microfilm process must follow standards to insure that the film is of archival quality and will be stored properly. Courts retaining the original records must provide proper storage to prevent damage or destruction to the original records.

See Appendix F. Utah State Courts Records Retention Schedule in Utah Court Rules

## RIGHT OF ACCESS TO COURT RECORDS

RULE OF THUMB: GENERALLY SPEAKING, ANY DOCUMENT IN A COURT FILE IS A MATTER OF PUBLIC RECORD UNLESS IT IS SEALED BY THE COURT OR IS CLASSIFIED AS CONFIDENTIAL OR PRIVATE BY STATUTE OR BY JUDICIAL COUNCIL RULE.

Rule 4-202 of the Code of Judicial Administration governs access to court records. Currently, court records are classified into four categories: PUBLIC, PRIVATE, CONFIDENTIAL, AND SEALED.

PUBLIC means data on individuals collected and maintained by the courts which is not classified as private or confidential under Rule 4-202 and is open to the public, unless otherwise exempted or restricted from disclosure by law.

PRIVATE means data on individuals collected and maintained by the courts which is available only to the courts, to others by the express consent of the individuals, and to the individuals themselves or next-of-kin when needed to acquire the benefits due a deceased person.

CONFIDENTIAL means data on individuals collected and maintained by the courts which is available only to the courts, but not to the individual who is the subject of the data or any other individual except upon order of the court.

SEALED means data which has been ordered sealed by the court pursuant to statute or court rule.

## CONFIDENTIALITY OF COURT RECORDS

Rule 4-202, Utah Code of Judicial Administration, provides guidelines as to which records may be disseminated.

In general, judicial records are public records. As a court clerk, you will have requests for information from the court's records. These requests may come from attorneys, credit bureaus, public interest groups, and other members of the public. The requests will range from the date of the next appearance in a case to a copy of everything contained in the case file.

The clerk must remember that while in general the files are available for public access, there are confidential areas protected by law. The judge may seal parts of a judicial record from public access. Pre-sentence reports are confidential and must either be sealed in the file or removed from the file before the file is released. If there are confidential computer printouts of driver's license information or criminal history information in the file, these must also be sealed or removed. There is a possibility of criminal misdemeanor charges being filed against a public employee who divulges such confidential information.

The clerk is a custodian of public records and must take care to preserve and protect it. The clerk should review the above mentioned rules, check with the chief clerk for local policies and procedures for protecting the case files (limits on where files may be examined, how copies are made, how many files may be given at once, how much information may be given over the phone), and strictly adhere to these policies.

While most information a clerk has access to is a matter of public record, most of the information is sensitive. A clerk should refrain from too much discussion in public about cases pending in court. The clerk may know of details not available to the rest of the public about pending cases. A conversation about these details of a case or the names of plaintiffs and defendants overheard in a restaurant, for example, gives a poor impression of the courts and court clerks to the public. Discretion in "talking shop" in public is especially important for court employees.

## CRIMINAL APPEALS FROM THE JUSTICE COURT

A defendant has the right to appeal any criminal case filed in the justice court whether he/she pleads guilty or is convicted. The defendant must file a Notice of Appeal with the justice court and appropriate district court within thirty (30) days of judgment rendered by the court.

When the appeal has been filed with the clerk in the justice court, the clerk then has twenty (20) days in which to prepare the file for transfer to the district court which has jurisdiction over that justice court. The file should include a certified copy of the docket or a register of actions, and the original of all documents filed in the case, as well as all original evidence and cash bonds or sureties, and the notice and undertaking of appeal.

The District court would then set the file up for a trial de novo (new trial) in the district court. When a judgment or other final order is entered by the District Court, the District Court clerk transmits notice of the manner of disposition to the justice court from which the case was appealed.

See Utah Rules of Appellate Procedure.

## EXPUNGEMENTS

The statutory authority governing expungements is 77-18-2 of the Utah Code of Criminal Procedure. The Code provides for an expungement and sealing of court and arrest records after expiration of the following time:

|   |         |
|---|---------|
| Second and Third Degree Felonies            | 7 years |
| Alcohol Related Traffic Offenses (Title 41) | 6 years |
| Class A Misdemeanors                        | 5 years |
| All Other Misdemeanors and Infractions      | 3 years |
| Arrests Without Filing of Charges           | 1 month |
| Proceedings Commenced and Dismissed         | 1 month |
| Acquittals                                  | 1 month |

Time is computed from incarceration, parole or probation, whichever occurs last; or absent a conviction, from date of arrest.

The clerk will assist the defendant in locating case files. To complete the petition the defendant must do the following:

1. Obtain a certificate from the Bureau of Criminal Identification indicating that there is no record with the bureau of an expungement regarding the petitioner.
2. Provide all requested information.
3. The plaintiff's designation should be the same as set out in the case file.
4. The defendants name should appear exactly as shown on the case file. Provide

any other names by which the defendant is known.

5. The petition must be typewritten or legibly handwritten before it is accepted by the court for processing.
6. The defendant must provide each of the following data:
  - a. Date of birth
  - b. Arrest date
  - c. Current address
  - d. Case number
  - e. Date in court
  - f. Offense
  - g. Years elapsed
  - h. Current date
  - i. Signature
7. Complete the petition and order form.
8. Present completed form and the Prosecutors Certificate of Review and Approval to the prosecuting attorney.
9. After the Certificate of Review and Approval is signed by prosecutor, present a petition to the Judge. Return petition to the clerk for processing along with the filing/processing fee of \$50.00.
10. Petitioner is responsible for distribution of the certified copies of the petition.
11. The original Petition and Order of Expungement becomes the property of the Court and will be added to the case file.

# CIVIL PROCEDURES

## SMALL CLAIMS ACTIONS

Small Claims Court is designed to permit the collection of small claims with a minimum of expense, delay or formality. Parties ordinarily appear without an attorney, although either may hire an attorney. The statute of limitations is the same as all other civil cases. Refer to U.C. A. 78-12-1 and 78-12-25, 78-12-26, 78-12-28, 78-12-29.

If a person (called the plaintiff) has a claim against another person (called the defendant) who lives within a justice court's geographical jurisdiction, or if the claim arose within the court's geographical jurisdiction, or of the company or corporation is doing business within the court's geographical jurisdiction, and the claims is \$5,000.00 or less including attorney's fees, but exclusive of court costs and interest, the plaintiff may go to the court clerk's office to prepare and sign an affidavit. The affidavit must list the amount of the claim, what it is for, the name and address of the defendant and the defendant's telephone number if available. Small claims court cannot be used for the following purposes:

1. To evict a tenant
2. To recover possession of stolen property
3. To enforce an injunction against someone
4. To collect "special damages" such as the trouble it takes a person to go to court or the time taken off from work to appear in court.

A corporation or business may be sued in much the same way as an individual. When suing a business, the Department of Commerce's Division of Corporations can be contacted for the following information:

1. Name and address of the registered agent
2. The full name of the corporation of, if the business is not a corporation, the manner in which it is filed with the division.

The person filing the claim must be the original owner of the claim and not an assignee (U.C.A. 78-6-6). The only circumstances under which one person can file and handle a claim for the plaintiff are:

1. If he/she is an authorized employee of the other person
2. If he/she is an authorized employee of a corporate claimant
3. If he/she is an attorney

If an employee is filing the claim, he/she should have on file with the clerk's office a letter of authorization from someone in an official capacity with the business.

Each defendant listed on the Affidavit must be served. An additional service fee must be paid to the constable or sheriff's office for this additional process.

A filing fee must be paid to the court clerk. In addition, a process server fee must be paid to the process server. A person who is a party to the action may not serve the Affidavit. If the plaintiff wins the case, these costs will be added to the amount of the judgment. Both parties should appear with any papers, evidence or witnesses they need to substantiate the amount of damage suffered or to prove their defense. The judge may render a judgment in the case by default if the



defendant fails to appear for trial or on the merits of the arguments if the defendant appears. If there are complex questions of law involved, the judge may take the case under advisement and render a decision at a later date. Judgments are usually rendered at the time of trial.

Either party may file an appeal within ten (10) days of judgment. The court cannot collect the judgment for the plaintiff. A judgment continues for eight (8) years unless satisfied. It is the responsibility of the plaintiff to file a Satisfaction of Judgment when the judgment is paid or a Dismissal if paid prior to judgment.

A judgment is only a judicial recognition that the debt in fact exists between the plaintiff and defendant. It entitles the plaintiff to use the mechanisms of the court to collect the money from the defendant. Refer to the section on Post Judgment Procedures for more information on how the amount of the judgment may be collected.

In civil actions the court usually plays a passive role. The litigants decide what to do next, and how to do it. However, the court's role in small claims court is different. It is anticipated that the court may need to assist in the preparation of the affidavit and subsequent pleadings, from judgment through collection.

The court must not slip into the role of plaintiff's attorney. The court should not advise the plaintiff on law strategy or make decisions for him. However, the court should not leave the plaintiff in the lurch with his uncollected judgment, but should educate him (and the defendant too) as to court procedures and forms.

If after the judgment the defendant does not pay the amount awarded, there are other procedures which may be used to collect the judgment. The court provides the forms free of charge, and assists in filling them out if requested. The statutory fees charged for signing and issuing the forms can be added to the judgment and collected from the defendant, along with the cost of serving them. Payment of the judgment, whether partial or in full, should be made directly to the plaintiff, and not through the court.

The Court must be notified when the judgment is paid and a Satisfaction of Judgment must be entered on the court records. There is no cost for this filing and a form may be obtained from the Court.

If the defendant did not appear in the judgment hearing a default judgment may enter. A copy of the Judgment must be mailed to the defendant.

If the defendant fails to pay the judgment after receiving notice, the plaintiff should consider calling or writing to find out why it has not been paid. If the defendant is called back to court, additional costs will be added to the judgment. If the plaintiff is not able to work out satisfactory arrangements for payment, the following collection procedures are available through the court:

- a. SUPPLEMENTAL ORDER - to find out what the defendant owns, earns or is owed. The defendant, when served, will be required to appear in court on the date set to answer questions about the defendant's financial situation. The plaintiff

must handle the questioning. He/she may ask for details as to amounts, addresses, and names, and should take notes so that he/she will have enough information to help in collecting the judgment. The Supplemental Proceedings is an order for the defendant to appear in court. The order to appear sets forth a hearing date. The order must be served personally on the defendant. If the defendant fails to appear after being served, the plaintiff may request the court to order him to give reasons why he/she shouldn't be held in contempt or may request the court issue a BENCH WARRANT if the previous papers were properly served.

- b. **ABSTRACT OF JUDGMENT** - to put a lien on the defendant's real property. If the defendant owns any real property (house or land) in Utah, the plaintiff can put a lien on it by filing an Abstract of Judgment. The plaintiff begins this procedure by obtaining an Abstract of Judgment form from the clerk no sooner than 10 days after the judgment was granted, completing it, having it issued by the clerk, and filing it in the District Court Clerk's office in the county where the defendant's real property is located. From the time the Abstract of Judgment is filed, it constitutes a lien on all real property in the county listed in the defendant's name. The defendant will usually be unaware of the lien until the defendant tries to sell or borrow against the property, or until a title search is performed.
- c. **EXECUTION** - to seize the defendant's property and sell it at public auction. Once the plaintiff has identified real or personal property owned by the defendant, they may have the sheriff or constable seize it and sell it. The proceeds will be used to pay the costs of the sale, the judgment, interest and costs. The balance, if any, will be returned to the defendant. Certain items are exempt from execution. The full list of exempt items may be found in Utah Code Title 78, Chapter 23. The plaintiff begins this procedure by obtaining a Writ of Execution form from the clerk, completing it, and taking the original and one copy, together with the location and description of the property to be seized, to the sheriff or constable.

A Writ of Execution is an order directing the sheriff to seize sufficient non-exempt property belonging to the defendant. Two copies of the Writ of Execution, the Notice of Sale, a Notice of Execution and Exemptions, and a Request for Hearing form, must all be served upon the debtor by the process server.

Certain property is exempt.

- d. **GARNISHMENT** - to intercept money owed to the defendant by someone else. The plaintiff may garnish wages or debts owed to the defendant and money in the defendant's bank accounts. The plaintiff begins this procedure by obtaining a packet of garnishment forms from the clerk, completing them, returning them to the clerk. The clerk will issue the Writ of Garnishment directed to the bank, employer, or debtor. State and Federal exemption on wage garnishments may limit the plaintiff's recovery to about 25% of the wages due when the Writ of Garnishment is served.

A garnishment is a procedure through which a judgment debtor's property is attached by a judgment creditor while it is in the hands of a third person, such as the debtor's employer or bank.

If the judgment creditor knows where the judgment debtor works, he/she may obtain a Writ of Garnishment which will attach 25% of the judgment debtor's disposable earnings which are due for the pay period during which the Writ is received by the debtor's employer (garnishee). An Affidavit of Garnishment must be filed at the time of the issuance of the Writ, and a fee of \$20.00 must be paid to the court. Two checks should accompany the Writ. One check is made out to the garnishee in the amount of \$25.00. This is an "answer fee" for answering the Writ, and for mailing copies of the answer to the court. The other check is made out to the sheriff or constable for service of the Writ.

The original Writ and one copy should be taken to a process server. The following documents should accompany the Writ:

1. Notice of garnishment and Exemptions
2. Request for Hearing (2 copies)
3. Instructions to Garnishee
4. Garnishee's certificate

The Writ and accompanying documents are served upon the garnishee by the constable or sheriff.

If it is a wage garnishment, the sheriff or constable should be told to serve the Writ just prior to payday, in order to attach the maximum amount owing in wages.

Once the papers have been served, the garnishee must do the following: serve upon the debtor the Notice of Garnishment and Exemption, the Request for Hearing (two copies), and a copy of the Writ including Answers to Interrogatories. Within ten (10) days of service, the garnishee must file notarized Answers to the Interrogatories with the court. After the garnishee has served the above on the debtor, the Garnishee's Certificate must be completed and returned to the court as proof of notification. (The Certificate indicates when notification was made). The debtor has ten (10) days from the date(s) he received the documents to request a hearing. The purpose of the hearing is to determine whether the funds to be garnished are exempt by law, or whether the funds belong to someone other than the debtor. If the debtor fails to request a hearing within ten (10) days, the creditor may apply to the court for a garnishee judgment. After the garnishee judgment is obtained, a garnishee execution may be issued which directs the sheriff or constable to obtain the attached funds from the garnishee.

If the garnishee answers and he owes defendant a certain amount, plaintiff can take judgment against garnishee for that amount. Plaintiff can get a Garnishee Judgment from the court to recover that amount. This should be served on the garnishee with a Garnishee Writ of Execution.

If the garnishee fails to answer at all within ten (10) days from service, the plaintiff can request the court enter his default and set a hearing to establish the amount of judgment against the garnishee.

Quite often a garnishment will trigger a settlement or payment in full without the necessity of proceeding to judgment, since both sides hate to bother with garnishment procedures. If this happens before recovering money from the garnishee, a Release of Garnishment should be given to the garnishee.

The plaintiff may serve as many writs of garnishment as necessary to collect the judgment, so long as it is not done for the purpose of harassment.

The plaintiff **MUST** keep track of all garnishment costs and monies collected on the garnishment.

If the creditor knows where the debtor banks, the creditor may obtain a Writ of Garnishment, which attaches the entire amount of money in the debtor's bank account. The procedure for all transactions in garnishing a bank account is the same as in garnishing wages.

**The court clerk should not help the plaintiff prepare the case or give advice. The Judge will determine the proper service and jurisdiction at time of hearing.**

There is no particular order of balance of action to collect a claim. This depends on the parties request.

# MONTHLY REPORTS

## INSTRUCTIONS - JUSTICE COURT MONTHLY REPORT

- WHEN TO FILE: You need to complete a separate report form each month for each court in which a judge sits. If the judge serves in a county justice court and also serves in a municipal justice court, two forms must be sent each month. If the judge serves two or more municipalities, one form must be sent each month for each court.
- WHERE TO FILE: Mail the form to the:  
Administrative Office of the Courts  
450 South State Street  
P.O. Box 140241  
Salt Lake City, UT 84114
- HOW TO FILE: Complete the form.  
Send the white copy to the state.  
Keep the blue copy for your court records.
- DEADLINE: The report must be received within ten (10) days after the last day of the month.
- ADDITIONAL FORMS: Call the Information Services Department at 578-3828 to order additional forms.

### **LINE BY LINE INSTRUCTIONS FOR COMPLETING THE FORM**

#### IDENTIFYING DATA:

On the top line, print or type the name of the judge. Write the name the same way on every report each month. In the next space, after the word "For" print or type the name of the municipality if you are reporting for a municipal court, or the precinct and county name if you are reporting for a county justice court.

In the next space on the top line, write the month and year of the report. In the last space on the line, you need to write your computer-assigned location number. If you do not know the number, contact Debbie Thurman (801-578-3825) Laura Ann Asay (801-578-3828) at the Administrative Office of the Courts. The signature of the judge should be placed on each report before sending it to the state.

## SECTION 1. TRAFFIC

### LINE 1a TOTAL TRAFFIC CASES FILED:

List the total number of traffic cases filed in the court during the reporting month. Each citation or information filed instead of a citation counts as one case, no matter how many separate charges have been made on a citation or information.

### LINE 1b TOTAL TRAFFIC CASES DISPOSED:

List all traffic cases which have been disposed of during the reporting month. Each citation or information disposed of counts as one case disposed, no matter how many separate charges appear on the citation. If the court has disposed of some charges, but not all the charges on the citation, the case is not counted as disposed on this line, but the charges which have been disposed will appear in the section below.

**NOTE: The number of cases filed will not necessarily equal the number of cases disposed of in any one month.**

### CHARGES FILED COLUMN:

The column on the extreme left is used to record the traffic charges filed during the month. There are two columns, one headed "state" and one headed "local." Please put the number of charges filed under state law (Title 41) in the "state" column and local ordinance violations in the "local" column. Traffic charges are recorded in the following categories:

*Driving under the Influence* - includes all violations charged under Section 41-6-44 Utah Code Annotated or the equivalent local ordinance.

*DUI reduced to Reckless Driving* - this block is shaded out on the form because the original filing should be shown in the DUI filing box.

*Driver's License Violations* - include here any driver's license violation, such as failure to have a license, or failure to meet the requirements of the safety responsibility act.

*Moving Violations (Reportable Violations)* - list here the offenses such as speeding, reckless driving, not alcohol related and other violations which are determined to be "reportable" by Driver License Division.

*Non-Moving Violations* - record here all other traffic or vehicle offenses except parking tickets, including overweight offenses.

*Parking tickets* - report parking tickets separately here.

*Failure to Appear Informations* - report the number of cases on which separate charges are being sought for failure to appear.

### CHARGE DISPOSITION COLUMNS:

The boxes on the right are used to record the charges disposed of during the reporting month and how they have been disposed. A charge may be disposed of by guilty plea or bail forfeiture, by a trial, nonjury or jury, a dismissal, a transfer or by the issuance of a warrant.

A bail forfeiture is the voluntary payment of a preset amount. It may be made by mail and occur prior to any adjudication by the court.

A guilty plea is counted if the defendant appears before the judge and enters a guilty plea.

A trial may be jury or nonjury. After trial, the possible dispositions are acquitted, if the person was found not guilty of the charge, or guilty if the person was found guilty.

A dismissal should be entered and counted for each charge which has been dismissed.

A transfer occurs when the charge and case are transferred to another court to be adjudicated.

If a warrant of arrest is issued for the defendant, note this in the column entitled “Warrants of Arrest.” This is where all of the cases that are FTAs should be noted so long as the warrant that has gone out is not for the separate Class B offense of Failure to Appear (Section 77-7-22). That offense is listed as a charge under “Failure to Appear Informations.”

Pleas in Abeyance are not counted on this form. The disposition of the charge is reported when it is entered as either guilty or dismissed.

**NOTE: The number of charges filed will not necessarily equal the number of charges disposed of in any given month.**

## SECTION II. CRIMINAL MISDEMEANORS

### LINE 11a TOTAL MISDEMEANOR CASES FILED:

Enter here the total number of misdemeanor cases filed during the reporting month.

### LINE 11b TOTAL MISDEMEANOR CASES DISPOSED:

Enter here the total number of misdemeanor cases disposed of during the reporting month.

**NOTE: The number of cases filed will not necessarily equal the number of cases disposed of in any one month.**

### CHARGES FILED COLUMN:

The column on the extreme left is used to record the misdemeanor charges filed during



the month. There are two columns, one headed “state” and one headed “local.” Please put the number of charges filed under state law in the “state” column and local ordinance violations in the “local” column. The total is recorded in the following categories:

- a. Assault
- b. Theft
- c. Failure to appear (includes failure to appear when the underlying citation is for a traffic offense, as well as for misdemeanors)
- d. Public intoxication
- e. Illegal sale of alcohol
- f. Other liquor violations (includes open container)
- g. Controlled substance act violations
- h. Bad check (criminal charges, not civil collections)
- i. Domestic animal ordinance violations
- j. Wildlife Resources violations
- k. Parks and Recreation violations
- l. Planning, Zone, Fire or Health violations
- m. Other misdemeanor or infractions, (include here any criminal charges which are not listed above.

#### CHARGE DISPOSITION COLUMN:

The boxes on the right are used to record the charges disposed of during the reporting month and how they have been disposed. These are the same categories as described above for traffic disposition.

### SECTION III. FELONIES

In this section, record any preliminary hearings which were held during the reporting month. Record the total number held in the line preceding “Preliminary Hearings Held.” Indicate how the cases were disposed of on the following lines - dismissed, bound over or transferred. The sum of the dispositions should equal the number of hearings held. For “Felony First Appearance,” list the number of felony first appearance hearings conducted.

### SECTION IV. SMALL CLAIMS

On the first line, record the total number of small claims cases which were filed during the reporting month. On the next three lines, record the dispositions of small claims cases which occurred in the reporting month. Indicate the number of small claims which were settled or dismissed, received a default judgment or had a trial.

### SECTION V. APPEALS

Record the number of appeals filed in the reporting month, small claims, criminal and traffic.

## SECTION VI. REVENUE COLLECTED

This section details the money actually collected to be disbursed to the various agencies during the month, **not** the amount assessed in the sentence.

NOTE: Fines that were assessed and partially paid prior to September 1, 1995, should continue to be disbursed to the state and local government as originally started. Fines that were assessed after September 1, 1995 should be disbursed upon payment based on the following percentages as outlined in Section 63-63a-2(2). The percentage for violations with 85% surcharge is 54% to the local government and 46% to the State. The percentage for violations with 35% surcharge is 74% to the local government and 26% to the State.

- Line 1.        Fines and Forfeitures: The amount should be reported based upon the surcharge associated with the charge and reported in one of these three column headings: 85%, 35% and no surcharge. For example, a \$100 payment on a charge with an 85 percent surcharge would be disbursed \$54.00 to the local government for the fine and \$46.00 to the state for the surcharge. The \$54.00 will be reported on line 1 in the 85% column. The “No Surcharge” would be used for non-moving traffic violations such as a seat belt violation, where there is no surcharge assessed. If it is impossible to break this information out into the various columns, you should place the total amount for fines and forfeitures out to the right of the “No Surcharge” column.
- Line 2.        Surcharge: The amount should be reported based upon the surcharge associated with the charge and reported in one of two columns: 85% or 35%. For example, a \$100 payment on a charge with an 85 percent would be disbursed \$54.00 to the local government for the fine and \$46.00 to the state for the surcharge. \$46.00 would be shown on line 2 in the 85% column.
- Line 3.        Other: Enter revenue collected by the court that is not fine or forfeiture, i.e. court costs.
- Line 4.        Total Collections: Enter the total revenue collected by the court for this month.
- Line 5.        Overweight Court Costs: Report here the costs collected as part of Overweight Fines as described in Section 78-5-116(4). These costs are retained by the local government.
- Line 6.        Sent to Wildlife Resources: Report here the dollar amount that was collected this month to be sent to the Division Wildlife Resources as described in Section 78-5-116(2)(a).
- Line 7.        Sent to Parks & Recreation: Report here the dollar amount that was collected this month to be sent to the Division of Parks and Recreation as described in Section 78-5-116(2)(b).
- Line 8.        Sent to State for Overweight: Report here the dollar amount that was collected

this month to be sent to the B & C Road Account as described in Section 78-5-116(4).

## SECTION VII. MISCELLANEOUS INFORMATION

This section applies to criminal and traffic cases.

Surcharge/Fines paid by Partial Payment: Enter the number of cases in which a partial payment was made rather than payment of the entire fine. A case should only be counted once in this category when the first payment is made and it is a partial payment of the entire fine. Additional payments after the 1<sup>st</sup> payment would not be counted.

**Example:** You receive 5 payments this month from 5 defendants. One of the payments is a fine payment for the entire amount of the fine due, one payment is the first payment of \$100 towards a \$500 fine, one payment is the second payment of \$100 towards a \$300 fine, and the other two payments are the final payment of the fines where money had been taken previously. You would enter "1" on this line (one for the first payment).

Judgment fulfilled by Alternate Order: Enter the number of cases in which a defendant performed community service or went to a treatment program in lieu of paying the fine. A case should only be counted once, even though they may receive credit on more than one occasion.

**Example:** This month two defendants receive credit for community service. The first defendant brings in a letter indicating he has completed all the hours ordered. The second defendant brings in a letter indicating he has completed another 50 hours (50 hours had already been reported last month). You would enter 1 on this line to count the first defendant. The second defendant had been included in the count last month.

Waived Surcharge: Enter the amount of surcharge that was credited or waived because the defendant completed community service or for some reason had the surcharge suspended rather than paying the fine.

Uncollected Surcharge: Enter the amount of surcharge that was determined to be uncollectible (will never be collected i.e. you are writing this amount off).

EDUCATION

## JUDICIAL BRANCH EDUCATION JUSTICE COURT CLERKS

Judicial Branch Education Rule 3-403 has a section specifically for local government employees. It states “All court staff employed by the justice courts shall complete 10 hours of approved coursework annually ... Education programs for court staff employed by local government shall include: annual training seminar; skill development programs that teach technical and job-related competencies; and enhancement programs that promote personal and professional growth.”

There is a section in the Judicial Code (78-5-110) dealing with compensation and expenses for clerical personnel. It states “The county, city, or town assumes the cost of travel and training expenses of clerical personnel at training sessions conducted by the Judicial Council.”

Attached is a self reporting form for court employees for mandatory education hours. Education hour requirements are for the calendar year (Jan. 1 to Dec. 31) and need to be completed by the end of December. The Court Administrator’s Office will offer two training seminars for Justice Court Clerks per year. If you have any questions, please call Rick Schwermer or Sharon Gilson at 578-3800.

## Self Reporting form for Justice Court Clerks

I have attended:

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Date

VOCABULARY  
TERMS

ABBREVIATIONS  
&  
ACRONYMS

## GLOSSARY

### Introductory Note

The purpose of this Glossary is to provide definitions in laymen's language of legal terms commonly encountered by citizens in courts of limited jurisdiction. Many of these terms have several definitions. Of these, only the definitions most appropriate to a court of limited jurisdiction have been given. More detailed definitions of the words included in this Glossary and other words not found here may be located in Black's Law Dictionary, Words and Phrases and other legal publications.

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| ABATEMENT:                   | (reduction or decrease) The proportionate reduction of a claim when the fund used for payment is insufficient to meet the full amount of the claim; the termination of a lawsuit due, for instance, to the death of a party. Also, a "plea in abatement."   |
| A FORTIORI:                  | By so much the stronger; all the more.  |
| ABROGATE:                    | To annul, repeal or destroy; to repeal a former law by legislative act, or by usage. (Abrogation: destruction, annulling former law)  |
| ABSENTIA:                    | In absence of... Trial in absentia.   |
| ABSTRACT OF JUDGMENT:        | An official certified copy of a court judgment which states the names of the parties in the case, the amount of the judgment and costs, the date of judgment and the magistrate who rendered judgment or the court in which it was rendered.  |
| ABSTRACT OF TITLE:           | A summary of deeds and other documents comprising the history of title to land.   |
| ACCEPTANCE AND SATISFACTION: | The taking and receiving of anything in good part.  |
| ACCORD:                      | An agreement between two persons whereby one who owes an obligation will give a substitute of money or performance and the other, upon receipt of such substitute, will give up his right to bring suit for the unpaid obligation; an out of court settlement. The fulfillment of the agreement is termed a satisfaction. |



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| ACCORD AND SETTLEMENT: | An agreement between two or more persons which settles a dispute claim or lawsuit through the payment of some amount or the performance of some action in satisfaction of the asserted claim.  |
| ACCUSED:               | The person against whom an accusation is made; one who is charged with a crime or misdemeanor.   |
| ACQUITTAL:             | A release from an obligation when used in reference to Contracts. In criminal law, a person is acquitted if the charge against him is dismissed either through a verdict of acquittal or by some formal conclusive legal procedure.  |
| ACT OF GOD:            | An inevitable accident.  |
| ACTION:                | (also called a suit) A proceeding in a court of law by which one party sues another to secure the enforcement or protection of a right or the redress of a wrong. Civil actions concern private rights and injuries. A criminal action is taken to redress a public wrong. |
| ACTIONABLE:            | That which furnishes legal grounds for an action.  |
| AD HOC:                | For this; for this special purpose.  |
| AD INFINITUM:          | Without limit; to an infinite extent; indefinitely.  |
| AD LITEM:              | While an action is pending.  |
| AD LOC:                | At the passage cited.  |
| ADDUCE:                | To present, bring forward, offer, introduce. Used particularly with reference to evidence.   |
| ADJUDICATION:          | To consider and pass judgment on a controversy based on evidence advanced.   |
| ADMINISTRATIVE:        | Of or pertaining to the management of a business or of public affairs; executive responsibilities and functions are indicated.   |

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| ADMINISTRATOR:          | A person appointed by a probate court to settle the estate of a deceased person. His duties are customarily defined by statute. If a woman is appointed, she is called the administratrix.                                     |
| ADMIRALTY:              | The law governing maritime matters.  |
| ADMISSIBLE:             | Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding.  |
| ADVERSARY PROCEEDINGS:  | One having opposing parties; contested, as distinguished from an ex parte application; one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. |
| ADVERSE POSSESSION:     | A means of acquiring title to property through occupancy for a specified number of years.  |
| ADVICE:                 | View; opinion, the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct.   |
| ADVISE:                 | To give an opinion or counsel or recommend a plan or course of action; also to give notice.  |
| ADVISED:                | Prepared to give judgment after examination and deliberation. "The court took time to be advised."   |
| ADVISEMENT:             | Consideration; deliberation; consultation.   |
| ADVOCATE:               | One who assists, defends, or pleads for another; one who renders legal advice and aid and pleads the cause of another before a court or tribunal, a counselor.   |
| AFFIANT:                | The person who makes and subscribes an affidavit.  |
| AFFIDAVIT:              | A statement or declaration reduced to writing and sworn or affirmed to before an officer who has authority to administer an oath or affirmation.   |
| AFFIDAVIT OF PREJUDICE: | Sets forth a reason why a trial cannot be held before a particular judge.  |

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| AFFIRM:              | To ratify, make firm, confirm, establish, reassert.  |
| AFFIRMATIVE DEFENSE: | A defense the defendant must prove which will defeat the plaintiff's or prosecution's case as a matter of law.   |
| AGENT:               | A person authorized by another to act for him; a substitute or a deputy appointed by a person and given discretionary power to act in his behalf.  |
| AGGRIEVED:           | Unjustly injured; unjustly caused grief or trouble.  |
| AGREEMENT:           | A coming together in opinion or determination, the coming together in accord of two minds on a given proposition.  |
| AID AND ABET:        | Help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, held in advancing or bringing it about, or encourage, counsel, or incite as to its commission.  |
| ALIAS:               | "Otherwise called," indicating one was called by one or the other of two names.  |
| ALIBI:               | Places a person someplace other than scene involved.   |
| ALLEGATION:          | The assertion, declaration or statement of a party to a case, made in pleading, setting out what he expects to prove.  |
| ALLEGED:             | Stated; recited; claimed; asserted; charged.   |
| AMEND:               | To improve. To change for the better by removing defects or faults.  |
| AMICUS CURIAE:       | (A friend of the court) A person who has no legal right to appear before the court in a certain proceeding. However, the court allows him to introduce evidence, argument or authority because he has a collateral interest in the case. |
| AMNESTY:             | An act by which a government grants a general pardon for an offense.   |
| ANCILLARY:           | That which is subordinate to, or assists, some other thing; e.g. ancillary administration.   |

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| ANNOTATED:              | Explained and commented upon by means of remarks or notes.  |
| ANNOTATION:             | A remark, note or commentary on some passage of a book, intended to illustrate its meaning. Annotations are often found in the State's Code books after a particular statute. The publishers list several cases previously decided in that State which interpret what the statute means or how it has been applied. Annotations are also found in volumes of case books which reprint decision of the State's highest appellate court or the United States Supreme Court. The annotations will discuss the case and give a history of other cases related to the one printed. |
| ANNUAL PERCENTAGE RATE: | A term required to be disclosed on all credit transactions under the Truth in Lending Law; it describes the cost, in percentage, of having credit.  |
| ANSWER:                 | Denotes an assumption of liability, as to "answer" for the debt or default of another. Types: Discovery (answers incompletely); Irrelevant answer; pleading (response of a defendant to the plaintiff's complaint); Sham answer (clearly false, presents no real issue to be tried). A pleading by the defendant in a civil case that contests the plaintiff's allegations of facts set forth in the complaint.   |
| ANTE:                   | Before; previously.   |
| APPEAL:                 | The request of a party to a higher court to review the rulings made in a lower court for possible errors that would justify overruling the lower court's judgment and perhaps granting a new trial.   |
| APPEAL BOND:            | Set by the court and filed by the appellant to stay issuance of execution until cause can be passed upon and disposed of by the superior court.   |
| APPEARANCE:             | The formal proceeding by which a defendant submits himself to a court's jurisdiction.   |
| APPELLATE COURT:        | Courts that review the decisions or findings of a trial court. They do not retry the case.  |

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| APPELLANT:              | The party who takes an appeal from one court or jurisdiction to another.  |
| APPELLEE:               | The other party to an appeal.   |
| ARBITRATION:            | A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after hearing both parties.  |
| ARGUMENT:               | An effort to establish belief by a course of reasoning.   |
| ARRAIGNMENT:            | The process of advising an accused person of the criminal charge against him and allowing him to state his answer to the charge.  |
| ARREST:                 | The apprehension or seizure of an individual to answer for a crime.   |
| ARREST OF JUDGMENT:     | The act of postponing a judgment.   |
| ARTICLES OF AGREEMENT:  | A written statement comprising the terms of an agreement.   |
| ASSAULT:                | (1) An unlawful attempt to use force towards another person so as to create in that person a reasonable fear of immediate danger, without actually touching that person.<br>(2) In modern criminal statutes, assault includes both the threat of the immediate touching and the actual touching of the person (See Battery) |
| ASSIGNEE:               | A person to whom an assignment is made; grantee.  |
| ASSIGNMENT:             | The legal transfer of a claim, a right or an interest in property to another person.  |
| ASSUMPTION OF THE RISK: | An affirmative defense in a negligence case which alleges that the plaintiff knew of the danger involved in what he was doing, did nothing to prevent his own injury and therefore as a result must bear the consequences of the action, and cannot ask for the defendant to pay for his injury.                            |

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| AT ISSUE:           | Status of a case when a particular point of fact is alleged by one party and denied by the other party. A case is most commonly at issue when a complaint and an answer have been filed.  |
| ATTACHMENT:         | The taking of property into the legal custody of an officer by virtue of the directions contained in a writ of attachment. A seizure under a writ of a debtor's property.   |
| ATTESTATION:        | The act of signing as a witness.  |
| ATTORNEY:           | In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another.   |
| ATTORNEY AT LAW:    | An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice who is employed by a party in a cause to manage it for him.   |
| ATTORNEY IN FACT:   | A person who is authorized by another to act in the latter's behalf. An attorney in fact is not necessarily a member of the bar.  |
| ATTORNEY OF RECORD: | Attorney whose name must appear in the permanent records or files of case, or on the pleadings of some instrument filed in the case, or on appearance docket.   |
| AUTHENTICATION:     | The act of giving authority or legal genuineness to a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence.   |
| BAIL:               | Security, money, posted to insure that a defendant will appear at all stages of his criminal proceeding.  |
| BAIL EXONERATION:   | The reversal of the burden, charge, or duty to guarantee the appearance of the defendant at a time and place designated by the court. Bail exonerated by the court is released back to the person or surety originally posting it, or to another individual as designated by the court. |

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| BAIL FORFEITURE: | <ul style="list-style-type: none"> <li>a. In minor criminal offenses (including most traffic offenses) which do not require the defendant to appear before a judge, "bail" is paid by the defendant to the court clerk (and automatically forfeited) to dispose of the case. It is similar to a fine, except there is no formal finding of guilt and no judge time required. After "bail" is paid (forfeited), it is immediately regarded as revenue and deposited into the revenue account.</li> <li>b. When the defendant is incarcerated, he may post "bail" (in an amount set by the court) to procure his release. The purpose of this "bail" is to ensure that the defendant will appear at the time and place designated by the court and submit himself to the court's jurisdiction. It may be in one of two forms: (1) Cash bail and (2) Bail bond.</li> </ul> |
| BAILIFF:         | An officer of the court whose function is to maintain order and to assist with the proceedings by ushering witnesses to the stand, administering the oath, etc.   |
| BAILMENT:        | A delivery of personal property by one person to another in trust for a specific purpose, with an agreement that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished.   |
| BATTERY:         | An unlawful touching, beating, wounding or laying hold, however slight, of another's person or clothing without his consent.  |
| BENCH:           | The seat occupied by the judge in courts. A seat of judgment or tribunal for the administration of justice.   |
| BENCH WARRANT:   | Process issued by the court itself, of "from the bench", for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the subpoena.  |
| BENEFICIARIES:   | Persons who are to receive money or property from an insurance policy, will, etc.   |

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| BEQUEATH:            | To hand down to posterity; to give or leave personal property by means of a will.   |
| BEST EVIDENCE RULE:  | A rule of evidence which denies admissibility into evidence of a copy of a writing if the original writing can be produced.   |
| BILATERAL:           | In a contract where both the contracting parties are bound to fulfill obligations towards each other.   |
| BILL OF ATTAINDER:   | A legislative act that inflicts punishment without a trial and which is prohibited under Article I, Section 9 of the U.S. Constitution.   |
| BILL OF COSTS:       | An itemized statement of authorized allowances and expenses that can be charged to the unsuccessful party to a lawsuit.   |
| BILL OF PARTICULARS: | A document listing the details of a claim for which a suit is brought. A pleading by the defendant for discovery of facts within the knowledge of the prosecution, or discovery of documents, writings, or other things within his possession or power to produce |
| BILL OF SALE:        | A written statement by which one person transfers to another his rights to personal property.   |
| BONA FIDE:           | Genuine, without fraud or deception.  |
| BOND:                | A formal certificate or evidence of a debt; also defined as an interest-bearing certificate of a public or private debt.  |
| BONDSMAN:            | A surety; one who has entered into a bond as surety.  |
| BREACH:              | The breaking or violating of a law, right, or duty, either by commission or omission.   |
| BREACH OF CONTRACT:  | Failure, without legal excuse, to perform any promise which forms the whole or part of a contract.  |
| BRIEF:               | A written or printed document prepared by a party or his attorney which if filed in court and sets forth both facts and law in support of his case.   |



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| BURDEN OF PROOF:        | Responsibility for presenting the proof of a certain fact.   |
| CALENDAR:               | (Or trial list) The list of cases to be tried during a court term.   |
| CAPACITY:               | Legal qualification (i.e. legal age) competency, power or fitness. Mental ability to understand the nature and effects of one's acts.  |
| CAPITAL CASE:           | One in which the death penalty or life imprisonment may, but need not necessarily, be inflicted.   |
| CAPTION:                | The caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.   |
| CASE:                   | Action, cause suite or controversy.  |
| CASE LAW:               | Judicial precedent generated as a by-product of the decisions which courts have made in resolving "unique disputes", as distinguished from statutes and constitutions. Case law concerns concrete facts. Statutes and constitutions are written in the abstract. |
| CATCH-LINE HEADINGS:    | Title of a rule or statute.  |
| CAUSE OF ACTION:        | The legal basis for a lawsuit by one person against another.   |
| CAVEAT EMPTOR:          | Let the buyer beware.  |
| CAVEAT VENDITOR:        | A phrase meaning "let the seller beware."  |
| CERTIFICATE OF SERVICE: | A signed writing by which a person who served process upon a defendant vouches that the service was performed.   |
| CERTIFY:                | To formally vouch for the accuracy of facts by a signed writing.   |
| CERTIORARI:             | (Lat.) The name of a writ of review of inquiry. It is a discretionary means by which an appellate court accepts cases for re-examination   |

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| CHALLENGE:               | The party's right to object to a juror during the selection of the jury for a trial.  |
| CHALLENGE FOR CAUSE:     | The removal of a potential juror by a party because the juror has an interest in the case, or a bias or prejudice against the party or his cause.   |
| CHAMBERS:                | Private office or room of a judge.  |
| CHANGE OF VENUE:         | Properly speaking, the removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the removal of a suit from one court to another court of the same county or district.  |
| CHARGE:                  | An accusation that a person has committed a crime. In a jury trial, the charge consists of instructions on law given by the judge to the jury at the end of the trial.  |
| CHATTEL:                 | An article of personal property.  |
| CHIEF JUSTICE:           | The presiding, eldest, or principal judge of a court of justice.  |
| CIRCUMSTANTIAL EVIDENCE: | Evidence that tends to prove a fact in issue by proving related facts and therefore affording reasonable inference of the occurrence of the fact in issue.  |
| CITATION:                | (1) An order or summons by which a defendant is notified of judicial proceedings against him, and which directs him to appear before a magistrate or judge at a specific time. (2) A reference to the text of a statute, ordinance, or judicial opinion by the use of identifying numbers such as section, volume, or page numbers. |
| CITIZEN:                 | A member of a nation or political community who owes allegiance to, and may claim protection from its government.   |
| CLASS ACTION:            | A civil suit brought by one person on behalf of others with similar claims who are too numerous to join as individual plaintiffs.   |

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| CLERK OF COURT:   | An officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc. An assistant whose principal duty is to make correct memorial of court's orders and directions. |
| CLIENT:           | A person who employs or retains an attorney, or counselor, to appear for him in court, advise, assist, and defend him in legal proceedings, and to act for him in any legal business.  |
| CODE:             | A compilation of the laws pertaining to a given topic or subject rifle.  |
| CODICIL:          | A supplement or an addition to a will, for the purpose of changing it, adding to it, or explaining it.   |
| COERCE:           | Compelled to compliance; constrained to obedience, or submission in vigorous or forcible manner.   |
| COERCION:         | Compulsion; constraint; compelling by force of arms.   |
| COGNIZANCE:       | Judicial notice or knowledge; the judicial hearing of a cause; acknowledgment; confession; recognition.  |
| COMITY OF STATES: | The practice by which the courts of one state recognize the laws and judicial decisions of another state.  |
| COMMIT:           | To send a person to prison, an asylum, workhouse, or reformatory by lawful authority.  |
| COMMITTEE:        | (Committee Resident) A person appointed by a magistrate or judge as the guardian of an infant, incompetent person or convict and empowered to sue or defend on behalf of such individual.  |
| COMMITMENT:       | The order which directs an officer to take a person to jail or prison.   |

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| COMMON LAW:           | Law created not by statute, but by judicial opinions, recognizing the authority of customs and practices dating from ancient English times that are still in effect today. Common law is invalid if it conflicts with federal or state constitutions or statutes.                |
| COMPENSATORY DAMAGES: | A payment of money to an injured party by a wrongdoer to restore the injured party to the position he had prior to the injury.   |
| COMPETENT:            | Legally qualified; able; fit.  |
| COMPLAINANT:          | Person who seeks to initiate court proceedings against another person. In a civil case the complainant is the plaintiff; in a criminal case he is the person who completes a complaint form and delivers it to a magistrate or judge prior to the issuance of an arrest warrant. |
| COMPLAINT:            | The allegations made by the one who institutes the law suit.   |
| COMPOUNDING A FELONY: | To agree, for a valuable consideration, not to prosecute a felon.  |
| CONCLUSIVE EVIDENCE:  | That which is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt.                          |
| CONCURRENT:           | Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same event.   |
| CONCURRENT SENTENCES: | Sentences for more than one crime which are to be served at the same time instead of consecutively.  |
| CONDEMN:              | To expropriate property, for public use.   |
| CONDEMNATION:         | The appropriation of private property for public use. Compensation is required.  |

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| CONFESSION:                      | A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it.   |
| CONFESSION OF JUDGMENT:          | An act of a defendant in a civil case whereby he admits liability and offers to pay a sum of money to the plaintiff without going to trial.  |
| CONSECUTIVE:                     | Successive; succeeding one another in regular order.   |
| CONSECUTIVE SENTENCES:           | Sentences for more than one crime which are to be served one after the end of another instead of concurrently.   |
| CONSECUTIVELY:                   | Follow one after another without interruption.   |
| CONSENT:                         | A concurrence of wills; voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another.  |
| CONSIDERATION:                   | Something which if of value given to one party to a contract by the other party, either of benefit to the recipient or of detriment to the giver.  |
| CONSTITUTION:                    | The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A written agreement that a union of people agree upon. |
| CONSTRUCTIVE SERVICE OF PROCESS: | Any form of service other than actual personal service; notification of a case or of some proceeding therein, given to a person affected by sending it to him in the mails or causing it to be published in a newspaper.   |
| CONTEMPT:                        | A willful disregard or disobedience of a public authority.   |

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| CONTEMPT OF COURT: | Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order. |
| CONTINUANCE:       | The postponement of a hearing or trial pending in a court to a subsequent day.   |
| CONTRA:            | Against.   |
| CONTRACT:          | Any agreement between two or more persons that creates, modifies, or destroys a legal relation.  |
| CONTRIBUTORY       | The expression indicates a failure to do that which a  |
| NEGLIGENCE:        | prudent and reasonable person would do, or to do that which a reasonable and prudent person would not do under the same or similar circumstances.  |
| CONVERSION:        | An unauthorized taking and exercise of the right of ownership over goods belonging to another person.  |
| CONVEYANCE:        | Transfer of title to property from one person to another.  |
| CONVICT:           | (Noun) One who has been finally condemned by a court. One who has been adjudged guilty of a crime or misdemeanor. Usually spoken of condemned felons or the prisoners in penitentiaries.   |
| CONVICT:           | (Verb) To condemn after judicial investigation; to find a man guilty of a criminal charge.   |
| CONVICTED:         | Means that a judgment of final condemnation has been pronounced against the accused.   |
| CORPUS:            | Body.  |

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| CORPUS DELICTI:         | The body of the offense; that, the commission of which, must be established, before the accused can be legally convicted. Also, the body of the crime; the necessary substantial evidence or proof that a crime has been committed.   |
| CORROBORATING EVIDENCE: | Evidence supplementary to that already given and tending to support or strengthen it.   |
| COSTS:                  | An allowance for expenses in prosecuting or defending a suit. Ordinarily, it does not include attorney's fees. There are often "court costs" in a case which are the expenses incurred by the court which may be assessed against one of the parties appearing in the case. |
| COUNSEL:                | Attorney or attorneys for a party.  |
| COUNTERCLAIM:           | An opposing claim by the defendant to offset the claim by the plaintiff.  |
| COURT ADMINISTRATOR:    | A manager or conductor of non-judicial affairs of the court.  |
| COURTS:                 | A legislative assembly. An organ of the government, belonging to the judicial department, whose function is the application of the laws. (Many types of courts).  |
| COURTS OF RECORD:       | Courts whose proceedings are permanently recorded by a court reporter. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.   |
| CREDIBILITY:            | That quality in a witness which renders his or her testimony worthy of belief.  |
| CREDIT:                 | The sale of property or services in exchange for a promise of deferred payment.   |
| CREDITOR:               | A person to whom a debt is owing.   |
| CRIME:                  | A positive or negative act in violation of penal law; an offense against the State.   |
| CRIMINAL:               | (Noun) One who has committed a criminal offense; one who  |

has been legally convicted of a crime; one adjudged guilty of crime.

CRIMINAL:

(Adj) That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime.

CROSS CLAIM:

A claim brought by one defendant against a co-defendant in a civil case.

CROSS EXAMINATION:

The examination of a witness by a party other than the one who first examined him, to test the truth of his testimony, to further develop it, or for other purposes.

CUSTODY:

The detainer of a person by virtue of lawful process or authority; actual imprisonment.

DAMAGES:

Money which may be recovered in the courts by any person who has suffered loss, detriment, or injury to his person, property or rights, through the unlawful act or negligence of another.

DAY IN COURT:

The time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf.

DAYS OF GRACE;

Additional days allowed beyond the due date for the payment of a debt or obligation.

DECEDENT:

A deceased person.

DECLARATION AGAINST  
INTEREST:

An out of court statement which, when made, conflicted with the monetary interest of the person making it, or could have been used to convict him of a crime, and which is admissible as an exception to the hearsay rule if the declarant is dead, seriously ill, or absent from the jurisdiction.

DECLATORY  
JUDGMENT:

Statutory remedy for the determination of a justifiable controversy where the plaintiff is in doubt as to his legal rights.

DECREE:

A final judgment or determination of a court.



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| DEED:       | A written document signed by the owner of real estate which transfers ownership to another person.   |
| DE FACTO:   | In fact, but without lawful right.   |
| DEFAMATION: | Spoken or written words concerning someone, which tend to injure that person's reputation and for which damages may be brought.  |
| DEFAMATORY: | Slandorous; libelous.  |
| DEFAULT:    | By its derivation, a failure. An omission of that which ought to be done.  |
| DEFENDANT:  | The person against whom a civil or criminal proceeding is begun.   |
| DE JURE:    | By lawful right; rightfully.   |
| DELEGATE:   | To appoint, authorize or commission. The transfer of authority from one to another.  |
| DEMEANOR:   | As respects a witness or other person, relates to physical appearance. It embraces such facts as: the tone of voice in which a witness' statement is made, the hesitation or readiness with which answers are given, the look of the witness, carriage, evidences of surprise, gestures, zeal, bearing, expression, yawns, the use of eyes, furtive or meaning glances, shrugs, the pitch of voice, self-possession or embarrassment; air of candor or seeming levity. |
| DEMURRER:   | An objection made by one party to his opponent's pleading, alleging that he ought not to answer it because of some defect in law in the pleading.  |
| DENIAL:     | A traverse in the pleading of one party of an allegation of fact set up by the other; a defense.   |
| DE NOVO:    | Anew; a second time.   |

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| DEPOSITION:              | The testimony of a witness taken before trial, reduced to writing and duly authenticated, and intended to be used at the trial.   |
| DEPUTY CLERK:            | One appointed to act in the place and stead of the clerk in the official business of the court.   |
| DESCENDANTS:             | Persons born of a certain family or group,  |
| DETAINER:                | (Unlawful detainer) The act of withholding real estate or chattels from a person lawfully entitled to possession of them.   |
| DICTUM:                  | An opinion by a judge on a point not essential to the decision on the main question.  |
| DIGEST:                  | A collection of summaries of court opinions arranged under headings of various legal topics.  |
| DIRECT:                  | The initial questioning of a witness by the party who calls him.  |
| DIRECT EVIDENCE:         | Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from circumstantial evidence, which is called indirect.   |
| DIRECT EXAMINATION:      | The first interrogation or questioning of a witness by the party on whose behalf he is called.  |
| DIRECTED VERDICT:        | In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it. A directed verdict may be granted either on the court's own initiative or on the motion of a party. |
| DISCHARGE:               | A court order to cancel, dismiss or to set aside the obligation of a contract.  |
| DISCHARGE IN BANKRUPTCY: | The release of a person who has been adjudged bankrupt from the obligation to pay his former debts.   |

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| DISCLAIMER:                  | The renunciation of an interest, right or obligation imputed to a person or alleged to be his; a vendor's disavowal of any promises relating to the quality of the items sold.   |
| DISCOVERY:                   | The disclosure by a party of facts, titles, documents, or other things in his exclusive knowledge or possession, which are necessary to the party seeking the information as a part of a case or action pending in a court.  |
| DISCRETION:                  | A liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of law, to decide and act in accordance with what is fair, as determined upon the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit and principles of the law. |
| DISMISSAL:                   | An order disposing of an action, suite, etc, without trial.  |
| DISMISSAL WITH PREJUDICE:    | An adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause.   |
| DISMISSAL WITHOUT PREJUDICE: | Dismissal of a complaint without prejudice to the right of the plaintiff to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to subsequent suit.   |
| DISORDERLY CONDUCT:          | A term of loose and indefinite meaning (except as occasionally defined in statutes) but signifying generally any behavior that is contrary to law, and more particularly such as tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality.  |
| DISQUALIFY:                  | To render ineligible; as in speaking of the "disqualification of a judge by reason of his interest in the case."   |
| DOCKET:                      | A brief entry or the book containing such entries of proceeding in a court of justice in the docket.   |

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| DOCUMENT:             | An official paper, written or printed, that gives information or proof of some fact.   |
| DOCUMENTARY EVIDENCE: | Evidence supplied by writings and documents of all kinds, as distinguished from "oral" evidence.   |
| DOING BUSINESS:       | A foreign corporation is "doing business" and thus subject to service of process within a state, if it conducts transactions therein in such a manner as to warrant the inference that it is present there, so as to subject itself to the jurisdiction and laws of the state in a court proceeding.   |
| DOMICILE:             | A fixed place established as the home of a specific person.  |
| DOUBLE JEOPARDY:      | The constitution prohibits more than one prosecution for the same crime against the same person, i.e., a person cannot be put in jeopardy of being prosecuted more than once for the same crime.   |
| DUCES TECUM:          | Bring with you. A subpoena duces tecum is a writ in which a witness is ordered to produce certain things at a trial.   |
| DUE PROCESS OF LAW:   | The conduct of legal proceedings according to those rules and principles which have been established in our system of law for the enforcement and protection of private rights. Its most essential elements are a court with proper jurisdiction over the subject matter and the defendant, notice to each party, the opportunity for each party to present evidence and to challenge the opposing party's evidence, orderly procedures and a neutral and unbiased trier of fact who determines the facts and decides the issues only on the basis of the persuasiveness of relevant evidence properly admitted. Due process is a safeguard against unreasonable, arbitrary, and capricious decisions. |
| DULY:                 | In due or proper form or manner; according to legal requirements.  |
| DURESS:               | Unlawful imprisonment, violence, or threats of bodily injury made to force a person to do something contrary to his free will.   |

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| DUTY:             | Legal or moral obligation, an obligation that one has by law or contract.  |
| EASEMENT:         | Rights to make use of the land of another in some way, such as a gateway or water course.  |
| EMBEZZLEMENT:     | The fraudulent appropriation by a person to his own use of benefit of property or money entrusted to him by another person.  |
| EMINENT DOMAIN:   | The right of the state government to become the owner of property for public use by the payment of compensation to the property's former owner.                                  |
| ENJOIN:           | To command or forbid by injunction, from a court of equity.  |
| ENTRAPMENT:       | The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him. |
| EQUAL PROTECTION: | A phrase in the 14th Amendment to the U.S. Constitution interpreted to imply that everyone must be equally affected by an act of a state.  |
| EQUITY:           | A system of rules and principles based on fairness and justice; a part ownership in property.  |
| ESCROW:           | Held in custody by a third person until the happening of the prescribed event, or performance of a condition.  |
| ESTOPPEL:         | The doctrine by which a person who has said or done something may not later say or do something inconsistent that will cause loss or injury to another.                          |
| ET AL.:           | (Lat.) An abbreviation of et alii, meaning "and others."   |
| ET SEQ.:          | (Lat.) An abbreviation of et sequentes, or et sequentia, meaning "and the following."  |
| EVIDENCE:         | That which is legally presented as a means of ascertaining the truth, such as through witnesses or objects.  |
| EX OFFICIO:       | By virtue of his office.   |

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| EX PARTE:              | (Lat.) Done for, in behalf of, or on the application of, one party, and without notice or participation by any adverse party.  |
| EX POST FACTO:         | After the event; from or by an after act.  |
| EXCEPTION:             | A legal term for a formal objection to the action or ruling of the court during a trial.   |
| EXECUTION:             | A remedy in the form of a writ or process afforded by law for the enforcement of a judgment.   |
| EXECUTION OF JUDGMENT: | An order that puts a final judgment of court in a civil case into effect by commanding a sheriff to take certain actions such as seizing money from a defendant's bank account to pay a judgment won by the plaintiff in a trial.  |
| EXECUTOR:              | Person or persons named in a will to carry out the provisions of the will.   |
| EXEMPLARY DAMAGES:     | Damages given beyond actual loss in order to punish and make an example of the offender. Synonymous with "punitive damages."   |
| EXHIBIT                | A writing or other article marked for identification and shown to the trier of fact during a court proceeding.   |
| EXONERATION:           | The removal of a burden, charge, or duty. Particularly, the act of relieving a person or estate from a charge or liability by casting the same upon another person or estate.  |
| EX PARTE:              | One side only; in the interest of one party only.  |
| EXPERT EVIDENCE:       | Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject, such as a doctor giving his opinion about a medical problem. |
| EX POST FACTO:         | After the fact. An act or fact occurring after some previous act or fact relating thereto.   |

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| EXPUNGE:                  | To destroy or obliterate. To blot out, efface, to strike out wholly.   |
| EXTRADITION:              | The surrender of one state or government to another of a person charged with a crime.  |
| FACIAS:                   | That you do or cause to be done.   |
| FAIR AND IMPARTIAL TRIAL: | One where accused's legal rights are safeguarded and respected.  |
| FALSE ARREST:             | Any unlawful physical restraint by one of another's liberty, whether in prison or elsewhere.   |
| FALSE IMPRISONMENT:       | Any unlawful physical arrest or detention of a person; a civil suit for such unlawful arrest or detention.   |
| FALSE PRETENSES:          | Designed misrepresentation of existing fact or condition whereby person obtains another's money or goods.  |
| FEE:                      | A charge fixed by law for services of public officers or for use of a privilege under control of government.   |
| FELONIOUS:                | A technical legal adjective which means an act done with intent to commit a crime of the grade or quality of a felony.   |
| FELONY:                   | Generally, a crime of a more serious nature than those designated as misdemeanors. Usually an offense punishable by imprisonment in a penitentiary for a year or more, rather than for a few months in a county or city jail as in the case of misdemeanors. |
| FIDUCIARY:                | Having the nature of a trust; confidential. Also one who holds goods in trust for another or one who holds a position of trust or confidence.  |
| FILE:                     | A record of the court.   |
| FINAL DECISION:           | The decision that settles the rights of parties respecting the subject matter of the suit.   |
| FINDING:                  | The result of the deliberations of a jury or a court.  |

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| FINE:                  | A sum of money paid as part of a penalty of conviction for a particular offense.  |
| FIRST APPEARANCE:      | Defendant's first appearance in court at which time he is advised of the charge against him, a plea is entered (except on a felony) and a trial date is set or upon plea of guilty, proof may be presented at that time. This may be defendant's first appearance upon being booked on probable cause and an information may not yet have been filed. Determination as to bail or release to be made. |
| FISCAL PERIOD:         | The period of time for which an analysis of the operations of the business is made.   |
| FIXTURES:              | Articles of personal property that have been affixed or annexed to real property, becoming real property.   |
| FORFEITURE:            | To lose the right to something due to neglect of a duty, due to an offense, or due to a breach of contract; for example, if a defendant fails to show up for trial, he or she may forfeit the bail.   |
| FORFEITURE OF BOND:    | A failure to preform the condition upon which obligor was to be excused from the penalty in the bond.   |
| FORGERY:               | The false making or material altering, with intent to defraud of any writing which if genuine might be the foundation of a legal liability.   |
| FORTHWITH:             | Immediately; without delay, directly, hence within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch.  |
| FRAUD:                 | An intentional perversion of truth for the purpose of inducing another who relies upon it to part with some valuable thing belonging to him or to surrender a legal right.  |
| FUGITIVE FROM JUSTICE: | A person who, having committed a crime, flees from jurisdiction of court where crime was committed or departs from his usual place of abode and conceals himself within the district.   |



FULL FAITH AND  
CREDIT CLAUSE:

The clause of the U.S. Constitution which provides that the various states must recognize legislative acts, public records, and judicial decisions of the other states within the United States.

GARNISHEE:

One garnished; a person against whom process of garnishment is issued; one who has money or property in his/her possession belonging to a defendant, or who owes the defendant a debt, which money, property, or debt is attached in his/her hands, with notice to him/her not to deliver to pay it over until the result of the suit be ascertained.

GARNISHMENT:

A procedure through which a debtor's property is attached by a creditor while it is in the hands of a third person, such as the debtor's employer.

GRAND JURY:

A jury of inquiry which is summoned and returned by the sheriff to each session of the criminal courts, and the duty of which is to receive complaints and accusations in criminal cases, hear the evidence presented by the state, and issue bills of indictment in cases where they are satisfied probable cause exists to believe a person committed a certain criminal offense.

GRATIS:

Without reward or consideration.

GUARANTOR:

One who promises to answer for the debt, default, or miscarriage of another.

GUARDIAN:

A person or entity to whom the law has entrusted the custody and control of another person, or estate or both of an infant or other incompetent.

GUARDIAN AD LITEM:

A person appointed by court to represent an infant, minor, or incompetent.

GUILTY:

Having committed a crime or tort: the word used by a prisoner in pleading to have an indictment when (s)he confesses to the crime of which (s)he is charged, and by the jury in convicting.

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| HABEAS CORPUS:         | A writ requiring that a person be brought before a judge or court for a hearing on the cause for which the individual is being held... "you have the body."  |
| HEADNOTES:             | Brief statements of either fact or holdings of the law.  |
| HEARING:               | A judicial proceeding in which an issue of fact is decided and decision rendered, such as on whether an accused should be held for trial.  |
| HEARSAY:               | Evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what (s)he has heard other say.  |
| HEARSAY EVIDENCE:      | Evidence given by a witness who speaks not from his own information but from information learned from another person. An out of court statement offered for the truth of the matter asserted.                                    |
| HEIRS:                 | Those who inherit by right of relationship.  |
| HOLDINGS:              | Points of law affirmed by a court of law. The legal principle to be drawn from the opinion (decision) of the court. Opposite of dictum.  |
| HOLOGRAPHIC:           | A document wholly written in the handwriting of the person in whose name it appears.   |
| HOMESTEAD:             | The real estate occupied as a home and subject to the right of having it at least partially exempt from levy and forced sale.  |
| HOSTILE WITNESS:       | A witness who manifests so much hostility or prejudice on direct examination that the party who has called him is allowed to cross-examine him, i.e., to treat him as though he had been called by the opposing (adverse) party. |
| HUNG JURY:             | A Jury so irreconcilably divided in opinion that it cannot agree upon any verdict.   |
| HYPOTHETICAL QUESTION: | A question based on facts previously admitted into evidence at trial, put to an expert witness to elicit his opinion regarding those facts.  |

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| IBID, ID OR IDEM:  | In the same place, the same.  |
| IMMUNITY:          | (1) Exemption from performing duties which the law generally requires other citizens to perform.<br>(2) In a criminal case, the promise to a witness made by the government not to use any self-incriminating testimony against that witness which the witness may give against the defendant in the criminal case then on trial. |
| IMPANEL:           | Has nothing to do with selecting or swearing Jurors, but means simply making the list of those who have been selected.  |
| IMPARTIAL JURY:    | Within constitutional provision is one which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged.  |
| IMPEACHMENT:       | Charging with misbehavior in office; challenging or discrediting the credibility of a witness.  |
| IN CAMERA:         | (Lat.) In chambers; in private.   |
| IN FORMA PAUPERIS: | Procedure by which a poor person may be a party to a court proceeding without paying costs.   |
| INADMISSIBLE:      | An adjective describing evidence or testimony which, under the established rules of evidence, cannot be considered by the trier of fact.  |
| INCARCERATION:     | Imprisonment; confinement in a Jail or penitentiary.  |

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| INCOMPETENCY:           | <p>Lack of ability, legal qualification, or fitness to discharge a required duty or understand certain events.</p> <p>(1) The legal status of a person who is unable or unfitted to manage his own affairs by reason of insanity, imbecility, or feeble-mindedness and for whom, therefore, a guardian or committee may be appointed.</p> <p>(2) The status of a potential witness prohibited from testifying by statute.</p> <p>(3) The status of a potential witness prohibited from testifying after a magistrate or Judge determines that the person cannot recall or relate the events accurately, cannot distinguish between truth and falsehood, or cannot understand the obligation to tell the truth.</p> |
| INCOMPETENT EVIDENCE:   | Evidence which is not admissible under the established rules of evidence. It must be distinguished from evidence which the magistrate should admit for the consideration of the Jury, even though they may not find it worthy of belief.   |
| INCONCLUSIVE:           | That which may be disproved or rebutted; not shutting out further proof or consideration.  |
| INCRIMINATE:            | To charge with crime; to expose to an accusation or charge of crime; to involve oneself or another in a criminal prosecution or the danger thereof, as in the rule that a witness is not bound to give testimony which would tend to incriminate him.  |
| INDEPENDENT CONTRACTOR: | One who contracts to do a piece of work according to his own methods and is subject to his employer's control only to final result of his work.  |
| INDICTMENT:             | An accusation in writing by a grand Jury charging that a person therein named has done some act, or been guilty of some omission, which, by law, is prohibited, i.e., is a crime.  |
| INDIGENT:               | In a general sense, one who is needy or poor. In a criminal prosecution, an indigent defendant may be entitled to have an attorney appointed to represent him at no cost.  |

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| INFORMATION:   | A formal written accusation filed in court for some criminal offense, in the nature of an indictment, but which is presented by a competent public officer instead of a grand Jury.   |
| INHIBITING:  | Obstructing.  |
| INJUNCTION:  | A judicial order or decree forbidding the performance of a certain act.   |
| INJURY BY FELLOW<br>SERVANT<br>(FELLOW SERVANT RULE) | An affirmative defense in a negligence suit where the plaintiff, an employee of the defendant, was injured by the negligent act of another employee of the defendant, so that the defendant is not liable. This rule is generally inapplicable because of a state's workmen's compensation law.   |
| IN PERSONAM:   | A remedy where the proceedings are against the person rather than against the thing; e.g. to have him arrested rather than to seize his property.   |
| IN RE:   | In the matter.  |
| IN REM:  | A remedy where the proceedings are against the thing rather than against the person.  |
| IN STATUS QUO:                                       | In the state in which it was.   |
| INSTRUCTION:   | A direction given by the Judge to the Jury concerning the law of the case.  |
| INTER ALIA:  | (Lat.) Among other things.  |
| INTEREST:  | <p>(1) A right to have an advantage accruing from something, such as a title to a share of ownership.</p> <p>(2) A rate of compensation for the use or forbearance of money, such as interest on a loan; a rate of compensation which must be paid by a Judgment debtor.</p> <p>(3) A relation to the matter in controversy, in the nature of a possible gain or loss, which might incline a person such as a Juror, witness or judge to favor one party to a suit.</p> |
| INTERIM:   | Meanwhile; in the meantime.   |

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| INTERLOCUTORY:   | Provisional, not final.  |
| INTERPLEADER:    | A proceeding by which the defendant states that the money or things in his/her <i>hands</i> , for which (s)he is sued, is claimed by a third person, avers his/her readiness to deliver to either as <i>the</i> court directs, and prays that they may be compelled to interplead and have their right determined. |
| INTERROGATORIES: | A formal list of questions. A set or series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case.   |
| INTERVENTION:    | The act by which a third person, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his/her right or interpose his/her claim.  |
| INTESTATE:       | The status of having died without making a valid will.   |
| IN TOTO:         | In entirety; completely.   |
| INVITEE:         | A person who goes upon land or premises of another by invitation either express or implied.  |
| IPSO FACTO:      | From the fact itself; in itself; by the mere fact or act.  |
| IRRELEVANT:      | Evidence not relating or applicable to the matter in issue; not supporting the issue.  |
| IRREVOCABLE:     | That which can not be changed; or unalterable.   |
| ISSUE:           | To circulate or send out. A certain dispute of fact or law taken to court.   |
| JEOPARDY:        | Danger; peril; the danger of convicting a defendant in a criminal action incurs when a valid indictment is found.  |
| JOINTLY:         | Acting together or in concert or cooperating; holding in common or interdependently, not separately, in an action neither may be sued separately when the parties are "jointly bound."   |

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| JOINTLY AND SEVERALLY: | Persons who are "jointly and severally" in bond or note may all be sued together, or the creditor may select any one or more as the object of a suit.  |
| JOINT TENANCY:         | A type of ownership wherein two or more persons have identical interests in property; when one dies, the other takes his share free of any claim of the heirs or widow.                            |
| JUDGE:                 | An officer appointed (or elected) to preside and administer the law in a court of Justice, and charged with the control of proceedings and the decision of questions of law or discretion.         |
| JUDGMENT:              | The official decision of a court upon the respective rights and claims of the parties to an action.  |
| JUDGMENT CREDITOR:     | The party in a lawsuit who has won a money Judgment against a debtor.  |
| JUDGMENT DEBTOR:       | A person who owes the money Judgment.  |
| JUDGMENT LIEN:         | A lien binding the property, usually real estate, or a judgment debtor.  |
| JUDICIAL NOTICE:       | The doctrine by which the court accepts certain matter without demanding evidence. Such matter includes state laws, historical events, geographical data, etc.                                     |
| JUDICIAL PROCEEDINGS:  | A proceeding which takes place in or under the authority of a court of Justice, or which relates in some way to the administration of Justice, or which legally ascertains any right or liability. |
| JUDICIAL REVIEW:       | A reconsideration or review by a higher court of a case tried in a lower court. Used especially to describe the examination of a case by an appellate court.                                       |
| JURAT:                 | The clause written at the foot of an affidavit stating when, where and before whom such affidavit was sworn.   |
| JURISDICTION:          | The legal authority of a court. The authority of a court to hear and decide an action or lawsuit. The geographical district over which the power of a court extends.                               |

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| JURISPRUDENCE:             | The science of law.   |
| JURY:                      | A certain number of men and women selected according to law, and sworn to inquire of certain matters of fact, and declare the troth upon evidence to be laid before them.   |
| JUSTICE OF THE PEACE:      | A Judicial officer of inferior rank having (usually) civil Jurisdiction limited to that prescribed by statute in civil cases and in criminal proceedings, prosecutions and commitments of offenders.  |
| JUSTICE COURTS:            | Inferior tribunals, not of record, with limited jurisdiction, both civil and criminal, held by Justices of the peace.   |
| LACHES:                    | Delay in bringing suit during which time the delay caused a change in the condition or status of the parties; an affirmative defense in a civil case.   |
| LACK OF JURISDICTION:      | The phrase may mean lack of power to act in a particular manner or to give certain kinds of relief. It may consist in court's total want of power to act at all, or lack of power to act in particular case because conditions essential to exercise of Jurisdiction have not been complied with. |
| LARCENY:                   | A crime involving the unlawful taking of another's property.  |
| LEADING QUESTION:          | A question asked of a witness which suggests to the witness the answer desired. It is prohibited on direct examination.   |
| LEGACY:                    | Money or property left to a person by a will; handed down from an ancestor or predecessor.  |
| LEGAL TENDER:              | That kind of coin which the law authorizes a debtor to offer and the creditor to receive in payment of a money obligation when offered by the debtor in the correct amount.   |
| LETTERS:                   | Commissions, patents, or written instruments containing or attesting the grant of some power, authority, or right.  |
| LEVY:                      | The seizure and sale of property by the court to satisfy a garnishment of judgment.   |
| LEX LOCI DELICTI COMMISSI: | The law of the place. Established the standard of conduct.  |



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| LIBEL:              | Anything written, printed or published that is intended to expose another to public hatred or ridicule.  |
| LICENSE:            | A personal privilege or permission to do some act or series of acts that would be unlawful to do otherwise.  |
| LIEN:               | The right of a creditor against certain property as security for a debt or claim.  |
| LIMITATION:         | A restriction, a time for which to act.  |
| LINEAL HEIRS:       | Heirs who are related to the deceased in a direct ascending or descending line, as children and grandchildren, parents and grandparents.   |
| LIQUIDATED:         | Paid off. as in debtedness.  |
| LIQUIDATED DAMAGES: | When the amount of the damages had been ascertained by the judgment in the action, or amount stipulated by the parties in the contract; the sum to which the party agrees to pay if he breaks some promise, etc. |
| LIS PENDENS:        | Litigation pending.  |
| LITIGANT:           | A party to a lawsuit; one engaged in litigation; usually spoken of active parties.   |
| LITIGATE:           | To dispute or contend in form of law; to carry on a suit; to try a case in court.  |
| LITIGATION:         | A contest in a court of justice for the purpose of enforcing a right; a suit at law.   |
| LOC CIT.:           | In the place cited.  |
| LOG SHEET:          | That piece of paper on which the clerk accurately reflects the Judicial proceeding in which (s)he is clerking.   |
| MAGISTRATE:         | A judge with limited, inferior powers.   |
| MALFEASANCE:        | The doing of an act which is unlawful; ill conduct that interferes with the performance of official duties.  |

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| MALICE AFORETHOUGHT:           | A predetermination to commit an act without legal justification or excuse.  |
| MALICIOUS PROSECUTION:         | One begun in malice without probable cause to believe the charges can be sustained.   |
| MANDAMUS:                      | (Lat.) (We Command.) This is a type of a writ issued from a court to command performance of specific duties which the complainant is entitled to have performed. It is generally directed to government officials or to a court of lesser jurisdiction. |
| MANDAMUS, WRIT OF:             | A summary writ issued from court of competent Jurisdiction to command performance of specific duty which relator is entitled to have performed.   |
| MANSLAUGHTER:                  | The unlawful killing of another, without malice.  |
| MASTER AND SERVANT:            | Employer and employee   |
| MATERIAL:                      | (Referring to evidence offered at a trial.) Important; more or less necessary; having influence or effect; going to the substantial issues in dispute.  |
| MATRICIDE:                     | The murder of a mother.   |
| MAYHEM:                        | The intentional maiming or disfiguring of a person.   |
| MIRANDA RULE<br>(Or warnings): | Prior to any custodial interrogation, that is questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of freedom in any significant way, the person must receive certain warnings.                 |
| MENS REA:                      | Criminal, evil, guilty intent.  |
| MERGER:                        | The joining of two or more things. In corporation law, the absorption of one company by another. In criminal law, the inclusion of a lesser offense in a higher charged offense.  |
| MINOR:                         | An infant or person who is under the age of legal competence.   |
| MISDEMEANANT:                  | A person guilty of a misdemeanor.   |

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| MISDEMEANOR:              | A criminal offense, less serious than a felony, punishable by a fine or short jail term.   |
| MISFEASANCE:              | The improper performance of a lawful act.  |
| MISTAKE:                  | Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence.  |
| MISTRIAL:                 | A trial of no effect due to some error in the proceedings.   |
| MITIGATING CIRCUMSTANCES: | Facts, conditions, or circumstances which do not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability or blame.  |
| MITIGATION:               | Alleviation; reduction, diminishing or lessening amount of penalty or punishment.  |
| MITIGATION OF DAMAGES:    | A term relating only to exemplary damages and their reduction of extenuating circumstances such as provocation of malice.  |
| MOOT:                     | Descriptive of something which is not genuine or concrete (pretend).   |
| MORAL TURPITUDE:          | Conduct contrary to Justice, honesty, modesty, or good morals.   |
| MOTION:                   | An application to a court, by the parties or their counsels, for a rule or order. (All facts must be found).   |
| MOTION TO STRIKE:         | A motion to the magistrate or Judge requesting that objectionable testimony of a witness be ruled inadmissible, i.e., that the Judge strike the testimony from the record or instruct the Jury to strike a statement from their consideration. |
| MUNICIPAL ORDINANCE:      | A law, rule or ordinance enacted or adopted by a municipal corporation for the proper conduct of its affairs or the government of its inhabitants.   |
| NATURALIZATION:           | The process by which a person attains citizenship.   |

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| NEGLIGENCE:      | The omission of such care as ordinarily prudent persons exercise.   |
| NEGOTIABLE:      | Capable of being transferred by indorsement or delivery so as to pass to holder the right to sue in his own name and to take free of equities against assignor payee.   |
| NOLO CONTENDERE: | (Latin: "Unwilling to contend.") A plea of "no contest" to a charge which does not admit guilt and which submits one to the justice of the court.   |
| NOMINAL DAMAGES: | A trifling sum given for the violation of a right where no actual loss has resulted.  |
| NON-BAILABLE:    | Not admitting of bail; not requiring bail.  |
| NONFEASANCE:     | Failure to do an act which one is under legal duty to do.   |
| NONJOINER:       | The omission to join some person as party to a suit or some cause of action, who ought to have been joined.   |
| NONSUIT:         | To record a plaintiff as having failed to establish his case; a judgment given against a plaintive for failure to establish his case.   |
| NOTARIZE:        | The administration of an oath to a person by a public officer who then attests and certifies, by his signature and official seal on the document, that the person swears that the facts recited therein are true. |
| NOTARY PUBLIC:   | A public official whose duty is to administer oaths and witness numerous types of official documents.   |
| NOT GUILTY:      | A plea of general issue in the actions of trespass and case and in criminal prosecutions.   |
| NOTE:            | A written promise to pay a certain sum of money at a given date to a specified person.  |
| NOTICE (civil):  | It proceeds from the plaintiff, and warns the defendant that he must plead to the declaration or complaint within a prescribed time.  |

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| NOTICE:                       | Communicated information from a authorized person or derived from a proper source.  |
| NOVATION:                     | The substitution of a new obligation for an old one, which is thereby canceled.   |
| NUISANCE:                     | Anything that unlawfully inconveniences, injures, or damages another or his property.   |
| NULLIFY:                      | To cause to be of no legal effect.  |
| OATH:                         | Any form of attestation by which a person signifies that (s)he is bound in conscience to perform an act faithfully and truthfully.  |
| OBJECTION:                    | A resistance or protest on legal grounds to the admissibility of evidence, or to the entry of an order or Judgment.   |
| OFFER:                        | A proposal to do a thing or pay an amount, a manifestation of willingness to enter into a bargain.  |
| OP. CIT.:                     | The same work as one previously cited.  |
| OPENING STATEMENT OF COUNSEL: | A statement made by a party or his attorney at the beginning of a trial whose purpose is to advise the Jury of facts which will be relied upon and of issues in the case in order to give the trier of fact a general picture of the facts. |
| OPINION:                      | The opinion of the court represents merely the reasons for its judgment, while the decision of the court is the judgment itself.  |
| ORDER:                        | A written direction of a court or court officer that is not included in a judgment.   |
| ORDER OF PUBLICATION:         | A court order directing a newspaper of general circulation to publish, for a specific number of issues, an advertisement of a civil summons, as a means of giving notice to a defendant upon whom personal service cannot be made.          |

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| ORDINANCE:           | An official rule of law made by a local authority.   |
| OSTENSIBLE:          | Implied; pretended; professed.   |
| OUTGUIDE:            | A heavy sheet of a distinctive color used to indicate the withdrawal of a paper or card from the files. It has space for such facts as: by whom removed, date to be returned, etc.   |
| OVERRULE:            | To refuse to sustain, or recognize as sufficient, an objection made in the course of a trial.  |
| OVERT:               | Manifest; not hidden, open; public.  |
| PANEL:               | A list of Jurors to serve in a particular court, or for the trial of a particular action; denoting either the whole body of persons summoned as Jurors for a particular term of court or those selected by the clerk. From this panel, the actual number of jurors are selected after voir dire.   |
| PAR:                 | (Latin) Equal.   |
| PARDON:              | An exercise of mercy delivering a convict from punishment and restoring his civil rights.  |
| PAROL:               | Oral; verbal; by word of mouth; spoken as contrasted to written.   |
| PAROL EVIDENCE RULE: | A rule of evidence which denies admissibility to any testimony concerning any oral agreements made prior to, or contemporaneous with, a written agreement when the written agreement was intended to be the final agreement between the parties and when the alleged oral agreements are offered to vary the terms of the written agreement. |
| PAROLE:              | The promise of a prisoner that in return for conditional freedom he will follow certain requirements.  |
| PARRICIDE:           | The crime of killing one's parent.   |

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| PARTIES:                       | The persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding. Parties can be individuals, businesses, organizations, or governments. |
| PARTITION:                     | The dividing of lands held by joint tenants or other types of ownership into distinct portions, so that they may hold them in severally.   |
| PAST RECOLLECTION<br>RECORDED: | An exception to the rule against hearsay which grants admissibility to a properly authenticated writing made by the witness contemporaneously with an event, if the witness is unable to testify from memory about the event.  |
| PATENT:                        | A grant of some privilege, property, or authority, made by the government to one or more individuals.  |
| PATRICIDE:                     | The murder of one's father.  |
| PEACE BOND:                    | A security bond which will be forfeited if the person violates a law.  |
| PEACE OFFICERS:                | This term is variously defined by statute in the different states; put generally it includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace.                            |
| PECUNIARY:                     | Relating to money; monetary.   |
| PECUNIARY DAMAGES:             | Monetary damages; damages paid or to be paid in money.   |
| PENAL:                         | Pertaining to punishment.  |
| PENDING:                       | Begun, but not yet completed; unsettled; in process of settlement or adjustment.   |
| PER DIEM:                      | Per day; an allowance of so much per day.  |

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| PEREMPTORY CHALLENGE: | The right to excuse a limited number of potential jurors without justification as granted to both plaintiff and defense counsel.  |
| PERFORM:              | To perform an obligation or contract is to execute, fulfill, or accomplish it according to its terms.   |
| PERJURY:              | The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a Judicial proceeding as part of his evidence, under oath, whether such evidence is given in open court or in an affidavit, when such assertion being given is known to such witness to be false. |
| PER SE:               | (Lat.) Taken alone; unconnected with other matters.   |
| PERSONAL SERVICE:     | Delivery of a writ, summons or notice to the person named therein by handing it to him.   |
| PETIT JURY:           | The ordinary Jury of twelve (or fewer, often six) persons for the trial of a civil or criminal case, so called to distinguish it from the grand Jury.   |
| PETIT LARCENY:        | The unlawful taking of a thing whose value is below a certain arbitrary standard such as \$50 or \$100. Any larceny of something with a value of more than that amount would be grand larceny.  |
| PETITION:             | A formal request to an authority for some privilege, right or benefit; a written application for an order of court or some action by a judge.   |
| PETITIONER:           | One presenting a formal written request or application to a judge or a court for an order or for some action.   |
| PLAINTIFF:            | A person who brings a suit, action, bill, or complaint.   |
| PLAINTIFF APPELLANT:  | A person who files an appeal  |
| PLAT:                 | A map or drawing showing dimensions and locations of sections of land.  |
| PLEA:                 | Statement made by the defendant either as to guilt or innocence to the charge made.   |



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| PLEADINGS:               | The formal assertions setting forth the claims and defenses of the parties to a lawsuit.   |
| POCKET PART:             | The annual supplements to the State Code books or similar publications which report the latest statutes or cases to make the books current. They are inserted in the back cover of each volume.  |
| POLICE:                  | The function of that branch of the administrative machinery of government which is charged with the presentation of public order and tranquility, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes.           |
| POLICE POWER:            | The power conferred upon government to impose restraints upon private rights in order to promote the health, safety, and welfare of the public.  |
| POLLING THE JURY:        | A practice whereby the Jurors are asked individually whether they assented, and still assent, to the verdict. To poll a jury is to call the names of the persons who compose a jury and require each Juror to declare what his/her verdict is before it is recorded.         |
| POOR PERSON'S AFFIDAVIT: | An affidavit filed with a court reciting that the person is financially unable to pay attorney fees, or court fees, and costs.   |
| POSTHUMOUS:              | Born after the death of the father; published after the death of the author; being or continued after death.   |
| POWER OF ATTORNEY:       | A written authorization to an agent to perform specific acts in behalf of his principle.   |
| PRAECIPE:                | An original writ, drawn up in the alternative, commanding the defendant to do the thing required, or show the reason why (s)he has not done it. Also an order, written out and signed, addressed to the clerk of a court, and requesting him/her to issue a particular writ. |
| PRAYER:                  | The request that the court will grant the process, aid or relief which the complainant desires.  |

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| PRECEDENT:                      | That which tends to serve as a guide or reason for a later course of action. An adjudged case or decision of a court, considered as a furnishing an example or authority for an identical or similar case. A course of conduct once followed which may serve as a guide. |
| PREJUDICE:                      | A forejudgment; bias; preconceived opinion. A leaning towards one side of a cause for some reason other than a conviction of its Justice.  |
| PRELIMINARY HEARING:            | A hearing to determine if there is enough evidence to hold the accused for trial.  |
| PREPONDERANCE OF EVIDENCE:      | Evidence that carries the greater weight.  |
| PRESENT RECOLLECTION REFRESHED: | Testimony by a witness who has some recollection of the event, but whose memory has been aided by a brief look at a writing which need not be authenticated.   |
| PRESUMPTION:                    | An inference as to the existence of a fact not certainly known.  |
| PRETRIAL:                       | Parties consider those matters that will promote a fair and expeditious trial and decide if a trial is necessary.  |
| PRIMA FACIE:                    | At first sight; so far as can be judged from the first disclosure; a fact presumed to be true unless disproved by some evidence to the contrary.   |
| PRINCIPAL:                      | A person or entity who has another person act for him or it.   |
| PRIOR INCONSISTENT STATEMENT:   | A statement made out of court contradicting the witness' testimony and used in cross-examination to impeach the veracity or accuracy of the testimony.   |
| PRIVILEGE:                      | An exceptional power of exemption; the claim by a witness that he has a legally protected right not to testify.  |
| PRIVILEGES AND IMMUNITIES:      | Right which owe their existence to the laws of Federal Government.   |

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| PROBABLE CAUSE:  | Facts and circumstances that give a reasonable person basis to make an arrest, or a search and seizure, or to prosecute a civil action.  |
| PROBATE:         | Proving of a will.   |
| PROBATION:       | In modern criminal administration, allowing a person convicted of some minor offense to go at large, under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a probation officer.                 |
| PRO BONO:        | For free. For the good; used to describe work services (legal) done or performed free of charge.   |
| PROCEEDING:      | In a general sense, the form and manner of conducting Judicial business before a court or Judicial officer; regular and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of Judgment. |
| PROFFER:         | A party's description of what the testimony will prove and the reasons it should be ruled admissible, after the opposing party has raised an objection.  |
| PROHIBITION:     | An order issued by a court halting the proceedings of a lower court or agency because the lower court or agency has exceeded its Jurisdiction.   |
| PROMISE:         | A declaration which binds the person who makes it, either in honor, conscience, or law, to do or not do some act, and which gives to the person to whom it is given a right to expect some particular thing.   |
| PROMISSORY NOTE: | Written promise to pay a certain sum of money to a certain person bearer on demand on a specified date.  |
| PRO SE:          | (Lat.) For himself; in his own behalf; without a lawyer.   |
| PROSECUTE:       | To follow up; to carry on an action or other Judicial proceeding; to proceed against a person criminally.  |

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| PROSECUTING ATTORNEY: | The name of the public officer who is appointed in each county or city, to conduct criminal prosecutions on behalf of the state or people.   |
| PROSECUTOR:           | A public official who takes charge of a criminal case and performs the function of trial lawyer for the people.  |
| PROSECUTRIX:          | A female prosecutor.   |
| PRO TEMPORE:          | For the time being; sometimes contracted to "pro tem."   |
| PROTEST:              | A formal declaration of disapproval. A written statement by a notary that a bill or note has been presented to someone who has refused to pay it.  |
| PROXIMATE CAUSE:      | Something which produces a result, and without which, the result could not have occurred.  |
| PUNITIVE:             | Relating to punishment; inflicting punishment or penalty.  |
| PUNITIVE DAMAGES:     | Often a large money judgment against a defendant to pay the plaintiff more than his actual loss, intended to punish the defendant for his willful misconduct and to deter the defendant and other persons from similar wrongful conduct in the future; sometimes referred to as "smart money." |
| QUASH:                | To overthrow; annul; make void.  |
| QUASI:                | As if; of a similar nature. This term is used in legal phraseology to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are intrinsic and material differences between them.  |
| QUIT CLAIM DEED:      | A document by which a person transfers all of his interest in a piece of real estate. It does not include a warranty of title, nor does it profess that the title is valid.  |
| QUO WARRANT:          | (Lat.) (By what authority.) A proceeding, derived from the old English writ, addressed to the prevention of a continued exercise of unlawfully asserted authority.   |

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| REASONABLE DOUBT:       | The state of mind in the trier of fact in a criminal trial who does not have an abiding conviction to a moral certainty that the evidence has proved the defendant's guilt.   |
| REBUTTAL:               | The stage in a trial where a party introduces new evidence to contradict the evidence and affirmative defenses presented by the opposing party.   |
| RECEIVERSHIP:           | An equitable remedy that prevents the improper disposition of contested money or property by the court appointment of a person to receive the money or property, preserve it, and dispose of it as the judge directs.   |
| RECESS:                 | In the practice of the Courts, a short interval or period of time during which the Court suspends business, but without adjourning.   |
| RECOGNIZANCE:           | (1) A written promise of the accused and other persons to forfeit a sum of money if the defendant fails to appear at a court proceeding, given as security for bail.<br>(2) "Personal Recognizance": A written promise of the accused to appear at a court proceeding without requiring the posting of security for bail. |
| RECORD:                 | A precise history of a suit from its commencement to its termination.   |
| REDEMPTION:             | The repurchase; the buying back of one's property after it has been sold.   |
| REDIRECT EXAMINATION:   | Examination of a witness by the party who called the witness, conducted after cross-examination, to rehabilitate the witness or amplify matters discussed in cross-examination.   |
| REGULATION:             | A rule or order promulgated by a governmental administrative agency.  |
| REHABILITATE:           | To invest or clothe again with some right, authority or dignity; to restore to a former capacity; to reinstate, to qualify again.   |
| REHABILITATE A WITNESS: | Restore a witness' credibility on redirect examination after it has been attacked during cross-examination.   |

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| RELEASE:         | The relinquishment of a right or claim against a person; an affirmative defense in a civil case.  |
| RELEVANCY:       | Quality of evidence which bears directly on a fact in issue and tends to prove the existence or non-existence of a fact.  |
| REMANDED:        | Sent back; the act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or a new trial, or to take further action.   |
| REMEDY:          | The appropriate legal form of relief by which a remedial right may be enforced; a legal means of enforcing a right or redressing a wrong.   |
| REMOVAL:         | Transfer of a case for trial from one court to a court of different jurisdiction or from one magistrate to another magistrate (or one Judge to another).  |
| RENDER JUDGMENT: | To pronounce, state, declare, or announce the Judgment of the court in a given case or on a given state of facts; not used with reference to Judgments by confession, and not synonymous with "entering," "docketing," or "recording" the Judgment. |
| REPLEVIN:        | A personal action brought to recover possession of goods unlawfully taken or unlawfully held.   |
| REPORTER:        | (1) A person who records court proceedings for the purpose of preparing an official record thereof.<br>(2) A commercial publication that contains judicial opinions, such as the Southeastern Reporter published by West Publishing Co              |
| REQUISITION:     | A demand in writing, or formal request or requirement.  |
| RES:             | The thing; the subject matter of the suit.  |
| RESCIND:         | To annul, or cancel a contract.   |
| RES GESTAE:      | (Latin: "The thing done.")  |

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| RES IPSA LOQUITUR: | Rebuttable presumption or inference that the defendant was negligent. Rule of evidence whereby negligence of alleged wrongdoer may be inferred from mere fact that accident happened...and the thing that caused injury was under management and control of the alleged wrongdoer.   |
| RES JUDICATA:      | (Lat.) A rule that a Judgment on the merits of a case by a court with proper Jurisdiction bars the parties, and those claiming under the parties, from contesting any facts and issues determined in the case, at a later date.  |
| RESPONDENT:        | The party who makes an answer to a bill or other proceeding in equity.   |
| REST:              | A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.   |
| RESTITUTION:       | An equitable remedy under which a person is restored to his/her original position prior to loss or injury, or placed in the position he/she would have been had the breach not occurred. Act of restoration.   |
| RETURN:            | The act of a sheriff, constable, or other ministerial officer, in delivering back to court a writ, notice, or other paper, which (s)he was required to serve or execute, with a brief account of his/her doings under the mandate, time and mode of service or execution, or his/her failure to accomplish it, as the case may be. Also the endorsement made by the officer upon the writ or other paper, stating what (s)he has done under it, the time and mode of service, etc. |
| REVOCATION:        | A withdrawal; an annulment; repudiation. The recall of some power or thing granted.  |
| RIPENESS:          | Exists when the subject of a controversy or a government act has a direct adverse effect on the party making the challenge.  |
| RULE:              | A standard, guide or regulation either promulgated by an entity possessing supervisory authority or accepted by tradition as a principle of law-   |

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| RULING:                   | A decision rendered by a judicial officer on a procedural or evidentiary issue.   |
| SANCTION:                 | Punishment or consequences dealt out for violation of accepted conduct.   |
| SANS:                     | Without.  |
| SATISFACTION:             | The discharge of an obligation by paying a party what is due to him or what was awarded to him by the Judgment of a court.  |
| SATISFACTION OF JUDGMENT: | A document stating that a recorded Judgment has been paid.  |
| SCIENTER:                 | Knowingly.  |
| SEALED:                   | Authenticated by a seal; executed by the affixing of a seal.  |
| SEARCH:                   | A prying into hidden or private areas to discover an object not immediately in plain view.  |
| SEARCH WARRANT:           | An order in writing, issued by a Justice or other magistrate, in the name of the state, directed to a sheriff, constable, or other officer commanding him/her to search a specified house, shop, or other premises, for personal property alleged to have been stolen, or for unlawful goods, and to bring the same, when found, before the magistrate, and usually also the body of the person occupying the premises to be dealt with according to law. |
| SECURITY:                 | A deposit of money with, or pledge to pay money to, another to satisfy an obligation that arises upon the occurrence of a contingency.  |
| SEIZING:                  | Possession of premises with the intention of asserting a claim to the freehold estate therein, practically, the same thing as ownership.  |
| SEIZURE:                  | The taking of an object from its possessor or custodian by a law enforcement officer.   |



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| SELF-DEFENSE:           | The protection of one's person or property against some injury attempted by another. The law of "self defense" Justifies an act done in the reasonable belief of immediate danger. When acting in Justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.   |
| SELF-INCRIMINATION:     | Exposure of oneself to a potential criminal prosecution because of oral or written statements made to a law-enforcement officer or in court.  |
| SENTENCE:               | <p>The Judgment formally pronounced by the court or Judge upon the defendant after his conviction in a criminal prosecution, awarding the punishment to be inflicted.</p> <ol style="list-style-type: none"> <li>a. CIVIL - in civil cases, the terms Judgment, decision, award, finding, etc., are used.</li> <li>2. SUSPENDED - Postponing of the execution of the sentence after it has been pronounced upon certain conditions.</li> <li>3. DEFERRED - Postponing of the execution of the sentence or deferred finding for a period of time upon certain conditions. Does not operate as a suspension of sentence.</li> </ol> |
| SEQUESTER:              | Separate; keep apart. (Used, upon order of court, to keep persons to be called as witnesses from hearing the witness on the stand.)   |
| SERVICE BY PUBLICATION: | Service of a summons or other process upon an absent or nonresident defendant, or an unincorporated business association defendant, by publishing the same in a designated newspaper, with such other efforts to give the defendant actual notice of a case pending against him. Usually this procedure is specifically set forth and authorized by a statute.  |
| SERVICE OF PROCESS:     | The delivery of writs, summonses, and other notices to the party to whom they are directed for the purpose of obtaining personal Jurisdiction over or notice to the party.  |
| SERVICE - MAIL:         | Some courts hold to the view that the mailing of a notice is not personal service. But others, interpreting the term as it is found in statutes, take a contrary view.  |

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| SERVICE - PERSONAL:       | Service of a writ or notice is made by delivering it to the person named, in person, or handing him/her a copy and informing of the nature and terms of the original or leaving a copy with a person of suitable age and discretion at the person's usual place of abode.  |
| SERVICE - PUBLICATION:    | Service of a summons or other process upon an absent or non-resident defendant, by publishing the same as an advertisement in a designated newspaper, with such other efforts to give actual notice as the particular statute may prescribe.   |
| SET-OFF:                  | That right which exists between two parties, each of whom, under an independent contract, owes an ascertained amount to the other to set off their respective debts by way of mutual deduction, so that, in any action brought for the larger debt, the residue only, after such deductions, shall be recovered. |
| SEVERENCE:                | A separation or breaking off; a division into parts.   |
| SHOW CAUSE:               | Against a rule, an order, decree, execution, etc., is to appear as directed, and present to the court such reasons and considerations as one has to offer why it should not be confirmed, take effect, be executed or as the case may be.  |
| SIGNATORY:                | A signer bound by the terms of a signed agreement.   |
| SLANDER:                  | The speaking of base and defamatory words tending to prejudice. To be actionable, the words must have been heard by someone other than affected thereby.   |
| SLIP OPINION:             | Printed opinion of an appellate court published in loose leaf form.  |
| SOLVENT:                  | Able to pay all that is owed.  |
| SOUND AND DISPOSING MIND: | The normal condition of the human mind, usually found to evidence the fact of competency of one disposing of his property by will.   |

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| SPECIAL DAMAGES:                             | Those which are actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case - by reason of special circumstances or conditions. To be recoverable they must be reasonably foreseeable. |
| SPECIAL VERDICT:                             | One rendered on certain specific factual issues posed by a court.   |
| SPECIFIC PERFORMANCE:                        | The actual performance of a contract by the party bound to fulfill it with no substitution of a like value or service.  |
| SPONTANEOUS EXCLAMATION (EXCITED UTTERANCE): | A statement or exclamation made out of court immediately after some exciting occasion as it is observed by a person, not necessarily a witness to be called in court. It is admissible as an exception to the rule against hearsay.   |
| STARE DECISIS:                               | To abide by, or adhere to, decided cases. Policy of courts to set precedent and not to disturb settle point.  |
| STATUTE:                                     | A law passed by a legislative body.   |
| STATUTE OF FRAUDS:                           | Statute requiring certain classes of contracts or engagements to be evidenced in writing in order to be enforced in court.  |
| STATUTE OF LIMITATIONS:                      | Statute setting time limit; declaring that no suit shall be maintained in such causes of action unless brought within a specified period.   |
| STATUTORY:                                   | Pertaining to a written law established by legislative enactment.   |
| STATUTORY AGENT:                             | A person appointed by statute, often the Secretary of State, to receive service of process for nonresident corporation defendants.  |
| STAY:  | To stop; the act of arresting a judicial proceeding by the order of the court.  |
| STAY OF EXECUTION:                           | A postponement of execution based on the likelihood of justification of further adjudication.   |

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| STIPULATION:             | An important article in an agreement. An undertaking in writing to do a certain act. An agreement between opposing counsel in a pending action.  |
| STRICT LIABILITY:        | Liability without fault.   |
| STRIKING A JURY:         | The selecting or nominating a Jury of twelve men out of the number returned as Jurors on the panel.  |
| SUBPOENA:                | (Lat.) The legal process ordering a witness to appear before a certain Judge or magistrate or in a certain court at a specified time to testify for the party named.   |
| SUBPOENA DUCES TECUM:    | (Lat.) The legal process by which the court commands a witness who has in his possession or control some specified document or item that is pertinent to the issues of a pending controversy to produce it at trial or some other official hearing.  |
| SUBROGATE:               | To substitute one person in the place of another with reference to a claim or right.   |
| SUBROGATION:             | The substitution of one person in the place of another, so that he who is substituted succeeds to the other's debt or claim.   |
| SUBSTANTIVE DUE PROCESS: | Doctrine that due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. Such as: No person shall be arbitrarily deprived of his life, liberty or property.                               |
| SUBSTANTIVE LAW:         | Law that governs the rights, duties, liabilities of the parties, and defines the issues which the evidence must prove.   |
| SUBSTITUTED SERVICE:     | Any form of service of process other than personal service such as service by mail or by publication in a newspaper; service of a writ or notice on some person other than the one directly concerned, for example, his attorney of record, who has authority to represent him or to accept service for him. |

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| SUGGESTEE EXECUTION:      | A levy on a person's present or past wages to satisfy Judgment.   |
| SUM CERTAIN:              | A specific amount of money.   |
| SUMMARY JUDGMENT:         | A ruling by a judge, when material facts are not in dispute, that allows a judgment to be made on the law alone without jury action.  |
| SUMMONS:                  | A notice to a defendant that an action against him has been commenced in the court issuing the summons and that a Judgment will be taken against him if he fails to answer the complaint. |
| SUPERSEDEAS:              | A writ by which proceedings are stayed.   |
| SUPPLEMENTAL PROCEEDINGS: | An order which summons the defendant back to court to answer questions concerning his/her assets and how (s)he proposes to satisfy the judgment.  |
| SUPPRESS:                 | To put a stop to a thing actually existing; to prohibit; to present, subdue, or end by force. "Suppress evidence", to keep it from being used in trial.                                   |
| SUPRA:                    | Above; upon. The word refers the reader to a previous part of the book.   |
| SURETY:                   | A person who incurs an obligation to pay money on behalf of another person in the event of the occurrence of a specified contingency.   |
| SURREBUTTAL:              | Evidence offered to counter rebuttal evidence.  |
| SUSPEND:                  | To interrupt; to cause to cease for a time; to postpone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption.                         |
| SUSPENDED SENTENCE:       | A sentence which is not put into effect, although, since it may take effect at a later date, it is not considered vacated.  |
| SUSTAIN:                  | To support or uphold a verdict, decision, objection, etc.   |

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| TACIT LAW:            | That law which arises out of the silent consent and the custom and usage of the people without legislative enactment.  |
| TESTATE:              | The status of having made and left a valid will.   |
| TESTIMONIAL EVIDENCE: | Proof offered the testimony of witnesses i.e., oral evidence, as distinguished from proof by writings, demonstrations, or articles.  |
| TESTIMONY:            | Evidence given by a competent witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources.   |
| TITLE:                | Evidence of a person's right to the ownership of property.   |
| TORT:                 | A private or civil wrong or injury to another person, independent of a contract. Three elements of every tort action are: existence of a legal duty from defendant to plaintiff, breach of duty, and damage as a proximate result. |
| TORT-FEASOR:          | A person who commits a tort; wrongdoer.  |
| TRANSCRIPT:           | An official copy of the original proceedings in a court; any copy of a writing.  |
| TRESPASS:             | The performance of an unlawful act (or of a lawful act in an unlawful manner) to the injury of another's person or property.   |
| TRIAL:                | In criminal procedure trials means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready, down to and including the rendition of the verdict.                                      |
| TRIAL DE NOVO:        | A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial whatever had been held in the court below.  |
| TRUE BILL:            | An indictment containing the signatures of the grand Jurors; commonly used as a synonym for indictment.  |

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| TRUST:                           | The holding for property by one person for the benefit of another.   |
| TRUSTEE:                         | Person holding property in trust. One who agreed to administer or exercise power for another.  |
| ULTRA VIRES ACT:                 | An act beyond the powers conferred upon a corporation by its charter.  |
| UNDUE INFLUENCE:                 | Any improper or wrongful constrain, machination, or urgency of persuasion whereby the will of a person is overpowered.   |
| UNENFORCEABLE CONTRACT:          | A contract having no legal effect or force.  |
| UNILATERAL:                      | One-sided; having relation to only one of two or persons or things.  |
| UNILATERAL CONTRACT:             | A contract in which only one party makes any express promise of performance.   |
| UNLAWFUL DETAINER:               | Unjustifiable retention of lands by one whose right to possession has terminated.  |
| UNLAWFUL ENTRY:                  | An entry upon real estate effected peaceably and without force, but which is without right or title and is accomplished by means of fraud or some other willful wrong. Also, the failure to leave the premises when required even though the original entry was legal. |
| UNREASONABLE SEARCH AND SEIZURE: | An examination or inspection by an agent of the government, without authority of law, of one's premises or person and the seizure of some evidence of guilt to be used in prosecution for crime.   |
| USURIOUS:                        | Involving interest in excess of a legal rate.  |
| USURY:                           | A term describing the imposition of an illegal rate of interest.   |
| VALID:                           | Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside.   |

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| VENIRE:            | To come; to appear in court. Sometimes used as the name of the writ for summoning a Jury. A writ to the sheriff or marshal to summon a jury.   |
| VENUE:             | The proper place to hold the trial; the place where a legal proceeding takes place.  |
| VENUE:             | The county (or geographical division) in which an action or prosecution is brought for trial.  |
| VERACITY:          | Truthfulness; the power of conveying or perceiving truth.  |
| VERBATIM:          | Word for word; in the same words.  |
| VERDICT:           | A Judge or Jury's decision on a matter submitted to them in trial.   |
| VERSUS:            | (vs., v.) Against.   |
| VOID:              | Null, ineffectual, nugatory; having no legal force or binding effect.  |
| VOIDABLE:          | Capable of being made void; annulable.   |
| VOIR DIRE:         | (French) (To speak the truth) The preliminary questioning of a potential Juror by a magistrate or Judge and sometimes by the parties or their attorneys to determine interest, bias, or prejudice. |
| WAIVER:            | The intentional and voluntary relinquishment of a known legal right.   |
| WANTON MISCONDUCT: | Behavior that manifests a disposition to perversity under such circumstances and conditions that the party doing the act, or failure to act, knows an injury will probably result.                 |
| WARD:              | A person under the care of a guardian or of a court.   |



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| WARRANT:           | <p>A writ issued by a Judicial officer commanding, and granting authority to a peace officer to perform some act.</p> <p>"ARREST WARRANT": A writ order issued and signed by a magistrate, or a Judge, directed to a peace officer or some other person specifically named, and commanding him to arrest a person named in it, who is accused of an offense.</p> <p>"SEARCH WARRANT": A writ issued by a Judicial officer to a sheriff or other law enforcement officer, commanding him to search certain premises and seize certain items and bring them before the judicial officer.</p>   |
| WARRANT OF ARREST: | <p>A written order issued and signed by a magistrate, directed to a peace officer or some other person specially named and commanding him/her to arrest the body of a person named in it who is accused of an offense.</p>   |
| WARRANTY:          | <p>A promise by a seller or his agents and employees regarding the quality of an item offered for sale, often accompanied by a statement of the purchaser's remedies if the item defective.</p> <p>"EXPRESS WARRANTY": A warranty created by oral or written statements of the seller or his agents and employees.</p> <p>"IMPLIED WARRANTY": A warranty created by operation of law although neither the seller nor his agents or employees have made any express warranty.</p> <p>"IMPLIED WARRANTY OF MERCHANTABILITY": A warranty that the item is equal in quality to items of equal description and price generally offered for sale.</p> <p>"IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE": A warranty that the item is suitable for the particular purpose intended by the purchaser of which the vendor is aware.</p> |
| WARRANTY DEED:     | <p>A deed in which clear title to the property is guaranteed by the seller; one which contains a covenant of warranty.</p>   |
| WILL:              | <p>An instrument directing the disposition of one's property after his death.</p>  |
| WILLFUL:           | <p>Done intentionally as distinguished from carelessly, inadvertently or accidentally.</p>   |

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| WITH PREJUDICE:                 | The term, as applied to judgment of dismissal, is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse <i>to the</i> plaintiff.   |
| WITHOUT PREJUDICE:              | Where an offer or admission is made "without prejudice," or a motion is denied or a suit dismissed "without prejudice," it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost except insofar as may be expressly conceded or decided. A dismissal "without prejudice" allows a new suit to be brought on the same cause of action. |
| WITNESS:                        | One who testifies to what (s)he has seen, heard or otherwise observed.   |
| WORKMAN'S<br>COMPENSATION LAWS: | The statutes that provide for a quick and definite indemnity to injured employees in the event of accidents.   |
| WRIT:                           | An order issuing from a court and requiring the performance of a specified act, or giving authority and commission to have it done.  |
| WRIT OF ATTACHMENT:             | A writ issued to a sheriff ordering him to seize property identified in the instrument and to hold the same in custody pending court action.   |
| WRIT OF CERTIORARI:             | A writ of review or inquiry. An appellate proceeding for re-examination of action of inferior court to enable appellate court to obtain further information in pending case.   |
| WRIT OF EXECUTION:              | A writ to put in force the Judgment or decree of a court.  |
| WRIT OF FIERI FACIAS:           | A court order directing a sheriff to seize money or personal property of a defendant to satisfy a money Judgment held by the plaintiff. Often called a writ of attachment.   |

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| WRIT OF MANDAMUS:    | This is the name of a writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its <i>officers</i> , or to an executive, administrative or Judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his/her or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which (s)he has been illegally deprived.  |
| WRIT OF POSSESSION:  | A court order directing a sheriff to seize specific real property of a defendant to satisfy a judgment for that property held by the plaintiff. Most commonly, it is used to evict tenants from landlord's property.   |
| WRIT OF PROHIBITION: | A writ issued by a superior court, directed to the Judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that Jurisdiction, but to the cognizance of some other court.   |
| WRIT OF REPLEVIN:    | A personal action ex delicti brought to recover possession of goods unlawfully taken, (generally, but not only, applicable to the taking of good distrained for rent,) the validity of which taking it is the mode of contesting, if the party from whom the goods were taken wishes to have them back in specie, whereas, if (s)he prefers to have damages instead, the validity may be contested by action of trespass or unlawfully distress. A local action to be brought where property is taken or where property is detained, unless statute regulates matter. Cardinal question in a replevin action is plaintiff's right to immediate possession of the property at the commencement of the action. |
| WRIT OF SUPERSEDEAS: | In practice, the name of a writ containing a command to stay the proceedings at law.   |

## COMMON ABBREVIATIONS AND ACRONYMS

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| ADA:      | Americans with Disabilities Act                        |
| ADR:      | Alternate Dispute Resolution                           |
| AG:       | Attorney General                                       |
| AOC:      | Administrative Office of the Courts                    |
| APP/APPD: | Adult Probation and Parole                             |
| BCI/UBCI: | Bureau of Criminal Identification                      |
| BW:       | Bench Warrant  |
| CASA:     | Court Appointed Special Advocate                       |
| CIC:      | Computer Integrated Courtroom (court reporting method) |
| COA:      | Court of Appeals                                       |
| CORIS:    | Court Records Information System                       |
| CTS:      | Credit for Time Served                                 |
| DCFS/DFS: | Division of Child and Family Services                  |
| DLD:      | Driver License Division                                |
| DMV:      | Department of Motor Vehicles                           |
| DPO:      | Deputy Probation Officer                               |
| DVN:      | Domestic Violence Network                              |
| FMLA:     | Family Medical Leave Act                               |
| FTA:      | Failure to Appear                                      |
| FTC:      | Failure to Comply                                      |
| FTE:      | Full-time Equivalent                                   |
| FY:       | Fiscal Year (JULY 1 - JUNE 30)                         |
| GAL:      | Guardian ad Litem                                      |
| HR/DHRM:  | Human Resources/Division of Human Resource Management  |
| IAT:      | Interagency Transaction of Funds                       |
| INS:      | Immigration and Naturalization Services                |
| IS:       | Intensive Supervision through APP                      |
| IT:       | Information Technology                                 |
| NJ:       | Non-judicial   |
| NJA:      | Non-judicial account                                   |
| ODC:      | Office of Debt Collection                              |
| ORG:      | Organization number                                    |
| ORS:      | Office of Recovery Services                            |
| OSC/OTSC: | Order to Show Cause                                    |
| PC:       | Probable Cause Statement                               |
| PET:      | Petition   |
| PD/PDA:   | Public Defender Association                            |
| PO:       | Probation or Parole Officer                            |
| PSI:      | Pre-Sentence Investigative Report                      |
| RA:       | Restitution Account                                    |
| SAPA:     | Substance Abuse Prevention Account                     |
| TCE:      | Trial Court Executive                                  |
| UCJA/CJA: | Utah Rules of Judicial Administration                  |
| ULS:      | Utah Legal Services                                    |

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| URCP:  | Utah Rules of Civil Procedure    |
| URCrP: | Utah Rules of Criminal Procedure |
| USP:   | Utah State Prison                |
| WA:    | Warrant of Arrest                |

Note that this list is not inclusive; each location will have its own list of abbreviations and acronyms for police departments, jails, and other programs. See your supervisor for additional acronyms used at your location.